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1   **UNITED STATES DISTRICT COURT**
                         DISTRICT OF NEVADA
2   **BEFORE THE HONORABLE LARRY R. HICKS, SENIOR DISTRICT JUDGE**
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4    ORACLE USA, INC., et al,        :
                                      :
5               Plaintiffs,          :
                                      : No. 2:10-cv-0106-LRH-VCF
6          -vs-                       :
                                      : September 21, 2021
7    RIMINI STREET, INC., et al,      :
                                      : Reno, Nevada
8               Defendants.           :
                                      : Volume 2
9    _____ :
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11   **TRANSCRIPT OF EVIDENTIARY HEARING**

12

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25

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1   RENO, NEVADA, TUESDAY, FEBRUARY 21, 2021, 9:00 A.M.

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4   THE COURT: Good morning. Have a seat, please.

5   Well, the record will reflect that we are

6   reconvened for day two of this particular hearing.

7   We left it last night about the Court reserving

8   its ruling on the evidentiary objection posed by Rimini. I

9   see I've been provided with points and authorities in support

10   of each parties' position, and I also entertained some oral

11   argument yesterday, late yesterday afternoon, before we

12   adjourned. I don't need oral argument again, or further. I

13   appreciate the request, but I'd like to move this along.

14   My ruling is going to be to deny the objection

15   raised by Rimini. I do so because the issue of these

16   similarities and the cross-comparison that concerned so much

17   of the testimony yesterday afternoon have been in front of

18   counsel for over a year. Apparently, that original

19   cross-comparison was attached to the original report in

20   January -- well, was it January of 2020, and it's also been

21   addressed by the report of Rimini's expert. I see

22   Mr. Astrachan's report talks about similarities.

23   This issue was clearly an issue that was present

24   and was certainly subject to the depositions of

25   Ms. Frederiksen-Cross, and I don't find any prejudice to the

1   defense whatsoever, and so for that reason I deny the

2   objection and will allow the testimony to stand.

3   I also note that a good part of that testimony

4   had already been presented before the objection was posed.

5   But, in any event, the essence of my finding is

6   that this issue of similarities was certainly present before

7   both sides early in 2020. It was subject to cross-examination

8   and examination and deposition testimony, and I find no

9   prejudice as a result of some extension of the similarities

10   testimony that was presented under the circumstances that are

11   present before the Court.

12   So, with that, I'd like to resume with the

13   Oracle case, please. Mr. Smith?

14   MR. SMITH: Yes, your Honor, we'll be recalling

15   Ms. Frederiksen-Cross.

16   THE COURT: Thank you. You can go ahead,

17   please.

18   MR. SMITH: Good morning, Ms. Frederiksen-Cross.

19   THE WITNESS: Good morning.

20   BARBARA FREDERIKSEN-CROSS,
          recalled as a witness on behalf of the Plaintiff,
21   having been previously sworn, testified further as follows:

22   DIRECT EXAMINATION RESUMED

23   BY MR. SMITH:

24   Q   Yesterday, and as your Honor just indicated, we were

25   discussing Exhibit 175 and the comparison that you conducted

1   between the file found on Rimini's systems, RSPCMPAY.cbl, and

2   the Oracle PSTARRAY file, PSTARRAY.cbl file.

3   I think I failed to ask you a question yesterday.

4   Do you consider the RSPCMPAY.cbl file to be a derivative work

5   of the Oracle file?

6   A   Yes. As it says in the description of the file, that the

7   programmer has put in the file, that this is -- the purpose of

8   this file is to augment the function in the TARRY file that we

9   discussed.

10   Q   When we left off, you were discussing some structural or

11   organizational similarities between the two files as shown in

12   Exhibit 175, and can you remind us of this similarity which I

13   believe you indicated began on line 135 -- or 134 of the

14   Oracle file in Exhibit 175.

15   A   Yes, it's the last line on page 5 of 57.

16   Q   And what is this similarity?

17   A   Well, again, as I started to describe yesterday, this is

18   a data area of the program, and in the case of this particular

19   data area, there are no constraints on what the programmer had

20   called this data area or how it structured this particular

21   data area.

22   And so starting particularly at the top of this data

23   area with the 01 level S_YTD, and then we see below that the

24   definition of a switch FETCH-YTD-SW.

25   If you page to the next page, please, at the top of

1   the page there.

2   And then below that some indicators of the value

3   that would be permissible for that switch, or that might be

4   used as named values when setting that switch. So

5   FETCH-YTD-END, FETCH-YTD-START, and then you see some other

6   ares below that, SQL-CURSOR being an area -- a numeric area

7   that's defined as a pointer area related to positioning and

8   return of elements.

9   Q   Okay. Did you find or observe any other structural or

10   organizational similarities between the two files?

11   A   There were. Principally those occur later in the program

12   in the operational code, what's called the Procedure Division.

13   Q   And can you direct to us a page?

14   A   Yeah, the procedure division starts on page 17, but I'd

15   like to direct you to the top of page 18.

16   The name Procedure Division, just to be clear, is a

17   required element of the Cobol program, and that's why we're

18   skipping over that. That could be anything.

19   So on the top of page 18 you see a series of

20   these -- I think I referred to them as flower boxes yesterday.

21   That's what they're typically called, or one of the things

22   they're typically called by programmers.

23   Q   What is the flower box?

24   A   It's used to delineate kind of an eye catch within the

25   program typically to delineate comments, though in this

1   particular case it's used to delineate the start of the main

2   processing section. So, you see the individual lines.

3   And if you wouldn't mind going back to the Oracle

4   program, it's probably a little better viewed in its proper

5   context. The line wrapping here makes it look a little bit

6   messy.

7   Q   So we would go back to --

8   A   That would be OREX_225.

9   Q   Okay, Oracle 225.

10   A   Hang on a second, and it will take me a second to find

11   that page for you.

12   Okay. So if you go to page 9 of 35, you see what

13   this comment actually looks like around the A00-MAIN section.

14   So the word A00-MAIN section is actually an indicator to the

15   Cobol compiler of the start of a new section of processing.

16   In this case it happens to be the first one.

17   And then in A00 -- AA000 is the name of that

18   specific paragraph within the program.

19   Q   And are the asterisks the flower box?

20   A   Yeah. The asterisks are part of the flower box.

21   Now, bear in mind they're completely non-functional.

22   They're just an eye catch put in by the programmer to help

23   delineate sections of the program. They're not required.

24   And one thing I want to point out while we're on

25   this particular example is you note that these line of

1   asterisks just starts with an asterisk.

2   Within the Oracle code there are a couple of

3   conventions that are used in delineating comments or using

4   these eye catches. Sometimes they start with an asterisk,

5   sometimes they start with a slash asterisk.

6   And I'll talk about an example in a minute where I

7   think that's an important factor in my evaluation of the

8   similarities.

9   Q   Okay. Do you want to go back to the comparison now?

10 A   Sure. We can go back.

11   So the program begins with the A00-MAIN section.

12 The programmers -- the Oracle programmer happened to name this

13 system AA000-MAIN, and the first paragraph, AA000, we see the

14 exact same naming choice in the Rimini program.

15   If you flip to the bottom of the program, page 56 of

16 57, we see a similar area at the end of the program, the

17 ZZ000-SQL-ERROR SECTION.

18   And here again, the choice of the Oracle programmer

19 to name this particular section and the paragraph that

20 follows, as well as the exit that you see at line 1908, is

21 identical in the Rimini code.

22   And, again, the name of this function is completely

23 unconstrained. It's chosen by the programmer. Its

24 position -- the position of this block of code within the

25 program is also completely discretionary.

1   Q   So going back to line 1895 of this Exhibit 175, the

2   flower box appears to start in both the Rimini code and then

3   in the Oracle code with a back slash.

4   A   Correct.

5   Q   And what is that indicative of to you?

6   A   Well, again, this shows that the inconsistencies in style

7   that are present in the Oracle program are also present in the

8   Rimini program.

9   And this you see, too, that on line 1900 the

10   description of this particular function, SQL -- that it's SQL

11   error processing, the exact same description for the function

12   has also been replicated on the Rimini side.

13   And, again, the programmer could have described this

14   in any way or left out the comment entirely. So, again, from

15   the forensic standpoint, I find that a telling similarity.

16   Q   In terms of the structural similarity regarding the

17   portions of the code that are being presented right now, which

18   I think begins at line 1895 of the Oracle code, why is the

19   placements of this error section at the end of the code files,

20   both code files, indicative of a structural similarity -- or

21   organizational similarity?

22   A   Well, it's the choice to move some of the hopefully less

23   frequently used code to the bottom of the program. So it's

24   just a design choice that the programmer made with respect to

25   where to place this.

1   It also probably aids in locating that section if

2   you ever are modifying the program and you want to come in and

3   add something there like maybe some additional logging or

4   messaging.

5   Q   Could the error processing portion of these code files be

6   placed anywhere?

7   A   They could, yeah, or pretty much anywhere. I mean, you

8   wouldn't want to put them in the middle of a functional

9   routine, typically you would want to isolate them. But once

10   isolated, they could be anywhere within the body of the

11   program.

12   Q   So in addition to the structural and organizational

13   similarities you've discussed already, did you observe other

14   similarities between the Oracle code file and the file found

15   on Rimini's systems?

16   A   I think we started to talk about some of the

17   irregularities in spacing the other day, or yesterday.

18   And I'd just like to note that the way that these

19   comments appear in the native program, if we can go back to an

20   example of that -- let me find a good one -- is that there are

21   sometimes some rather peculiar positional elements within the

22   comments as well.

23   Q   And so are you now referring back to the Oracle code file

24   which was 225?

25   A   Yeah. I need to locate myself first in the side-by-side,

1   and then I'll go to 225. It will be a little faster for me to

2   find it if I look for it in the side-by-side, or look for an

3   example, and I'll try to direct you to a specific page.

4   Okay. For instance, if you go to page 8 of

5   OREX_225, the third flower box down the page, Additional

6   Library Function Parameters, you see how the -- can you blow

7   it up a little bit more to the right? I want to point out a

8   couple of things about this comment.

9   For instance, it starts with the "slash convention"

10   in the top line of the flower box, and you notice how the line

11   that says Additional Library Function Parameters has got a

12   star in front of it and some weird spaces, and then there's

13   a -- the flower box lines don't go the full length of the

14   description, but on that particular line there's kind of an

15   orphan little flower out on the side.

16   Q   And you're referring to the asterisks on the right-hand

17   side.

18   A   On the right-hand side of the Additional Library Function

19   Parameters comment, yeah.

20   Now, if we go back to the side-by-side, or if you

21   pull up the Rimini file, either way, you'll see that not only

22   has this line and comment been replicated, but the same --

23   Q   Maybe we should go to Exhibit 237 which is the Rimini

24   file.

25   A   Yeah, I think that would be clearer just because of the

1   line wrapping in the side-by-side.

2   And in 237, that starts on page 3 of 9.

3   Q   And I think it's being displayed at present; is that

4   correct?

5   A   That's correct.

6   And so you see the same kind of oddness here with

7   respect to the flower box not really, fully tracking across

8   the top of the comment, and that lone asterisk out to the

9   side.

10   And I don't know if it's possible for you to put

11   these up side by side. In the side-by-side comparison you can

12   see the positionally they're the same, but it's probably

13   easier to see it if you're able to put this up side by side

14   for the two programs.

15   Page 3 -- I'm sorry, page -- let's see, that's the

16   Oracle one on the right, so that would be, I think, page 8. I

17   think.

18   Q   Okay. So this shows that -- do you call these comment

19   boxes or flower boxes?

20   A   Yeah. The programmers sometimes call them flowers boxes,

21   but they're really comment blocks.

22   Q   And so what do you take from this comparison of the

23   comment box or flower box from page 3 of 9 of the Oracle

24   Exhibit 237, and page 8 of 35 of Oracle Exhibit 225?

25   A   Well, again, you see the same stylistic oddities present

1   in both bodies of code, which to me, since this is an element

2   that is not required for the program at all and is rather

3   completely discretionary on part of the programmer, whether or

4   not to include it and what to say in it and how to format it,

5   these are more indicia to me that support my opinion that the

6   Rimini file derived initially as a copy of the PSPTARRY

7   file -- I mean, was the Oracle PSPTARRY file, and then was

8   subsequently modified it to do the changes that Rimini felt

9   were necessary for this particular update.

10   Q   Okay. So returning to your demonstrative or your Exhibit

11   175 which compares the two files, did you observe other

12   similarities between the two files?

13   A   Well, there are similarities also, though they're

14   somewhat evident in the material we've already covered with

15   respect to, for instance, the naming conventions for the

16   switches, the naming conventions chosen for some of the

17   variables that were not constrained by any functional

18   requirement of the system.

19   Q   Okay. And can you provide us an example of a variable

20   name?

21   Well, first of all, let's start with what is a

22   variable name?

23   A   A variable is just the name of an area in memory that you

24   will put variable contents. So it might have a 1 in one

25   instance, it might have a 5 in another, it might have an A.

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1   It just is an area that is expected to vary during

2   the course of the program because you're using it for some

3   form of logic. A numeric area used for a computation would be

4   another example.

5   And those are contrasted to what are called literal

6   values, and that's where you might reserve an area of memory

7   where you put something in it like the name of the program

8   that's never going to change during the life of the name of

9   the program.

10   Q   Okay. Can you point us to a parameter similarity between

11   the two files I've shown in Exhibit 175?

12   A   With respect to parameters, yes.

13   Q   I'm sorry, variable, Variable.

14   A   Well, I think we talked about a couple already.

15   So, for instance, that FETCH-YTD switch, that's on

16   page 6 of 57 in the side-by-side. Another example would be

17   SQL-CURSOR.

18   That one is something that is still discretionary to

19   the program but might arguably would be subject to some

20   convention because it's descriptive, it's just saying it's the

21   cursory area for the SQL, but it is something that could have

22   a different name and, in this case, has the same name.

23   Similarly, the SQL-STMT on line 140, that could be

24   given any name.

25   Q   Do you consider variable names to be creative expression?

1   A   Well, they're chosen by that the programmers as they

2   write the program. I mean, the choice of whether to call it

3   SQL statements spelled out or SQL-STMT, or just S statement,

4   the programmer chooses what they want to call it.

5   Q   Was more than one variable name common between the

6   RSPCMPAY.cbl and PSPTARRY.cbl files?

7   A   As I recall, there were seven or eight that were

8   completely unconstrained that were in common, and then there

9   were a comparable number that were simple descriptive like

10 this SQL-CURSOR that may arguably be just a simple name but,

11 nonetheless, were identical between the two.

12 Q   Now, Professor Astrachan contends that certain variable

13 names must be used for this program. Do you agree with that?

14 A   Yes and no, and let me clarify there.

15   If you use, for instance, one of the Oracle copybook

16 statements, if you choose to use that copybook included in

17 this program, or SQCs it would be here, then you would refer

18 to things using the name that was defined in that SQC if it

19 was defining memory area.

20   So in that sense it's constrained by the choice to

21 use Oracle's code and include it in this program.

22   I'm aware that Dr. Astrachan said that some of the

23 parameters, which are also given variable names, that are used

24 in invoking the SQL subroutine, were constrained, and I

25 disagree that those parameter names would need to be the same.

1   Q   And can you provide us an example of a parameter name

2   that you disagree needs to be the same or is constrained to be

3   the same?

4   A   Sure.

5   Q   And maybe we could go to page 29 of 57 because I think

6   that we've already talked about that section.

7   A   Sure, that works.

8   So you see here that there is a statement Initialize

9   Select Data of S-YTD, and select data is one of the

10   subgroupings below that S_YTD file that we were talking about,

11   or data grouping that we were talking about a moment ago.

12   That select data area could have been called

13   anything. As long as you refer to it consistently, it doesn't

14   have to be select dash data, for instance.

15   Similarly, if you look at the Call to PTPSQLRT

16   using -- and then there are three variables listed there,

17   Action-Fetch, SQLRT, and SQL-CURSOR, in the Cobol language

18   this -- and in this file, these are positionally determined.

19   They are not determined by the name of the variable.

20   When you're calling a subroutine, you're calling it

21   passing a series of variables that serve as parameters for

22   that subroutine, and they tell that subroutine what -- in the

23   case of Action, for instance, what you want it to do.

24   Q   So what's the parameter that is being displayed on lines

25   888 of the Oracle code forward? Or, is there more than one?

1   A   There are several. ACTION-FETCH is a parameter, and on

2   the line below that SQLRT, and on the line below that

3   SQL-CURSOR.

4   Now, those are positionally dependent, and when you

5   call this subroutine for the purpose that's being used here,

6   you have to have those parameters, but you don't have to call

7   them the same thing.

8   Q   Okay. So --

9   A   So, for instance, you're using ACTION-FETCH in this

10   instance because you've chosen to use Oracle's copybook that

11   gives you the value of ACTION-FETCH.

12   But in reality the only thing that the receiving

13   program cares about, is -- in this case that it's an F that

14   tells it to do a Fetch.

15   You could have called it go get 'em. You know, you

16   could have said call PTPSQLRT using go get 'em if you had

17   chosen to name the data area that -- in the working storage

18   area where you set the data up.

19   Q   Okay.

20   A   But it would have had to have had the value F to serve

21   the same purpose, so that the value assigned to that data area

22   is required but not the name of the data area.

23   Q   What conclusions did you reach overall based upon your

24   comparison of the file found on Rimini's systems and the

25   Oracle file which is contained in Exhibit 175?

1   A   The number and the nature of the similarities, and the

2   number and the nature of the oddities that these two programs

3   share in common, again, suggest to me that protected

4   expression that was created by an Oracle programmer was copied

5   into the Rimini file as a part of the creation of this file.

6   Q   Were there similarities between the files that you did

7   not consider probative to your protected expression analysis

8   or determination?

9   A   Of course.

10   Q   And did you -- what did you do with those?

11   A   I discounted them from consideration as probative of

12   anything. For instance, the presence, the presence of the

13   word procedure division, that's required in the Cobol program.

14   So any two Cobol programs you look at are going to say

15   procedure division.

16   Similarly, the name of PTPSQLRT, the subroutine

17   being called here, that's an Oracle-supplied subroutine that

18   allows this Cobol program to perform SQL statements against a

19   database by invoking that subroutine.

20   So the fact that both of them are calling PTPSQLRT

21   is not at all remarkable, that the name of the subroutine

22   would be something that I would discount because it's an

23   Oracle constraint.

24   And throughout the program you see other similar

25   things. You know, for instance, the name -- if you scroll

1   back a few pages in the side-by-side to almost any area that's

2   in the data section of the program, you'll see filler.

3   Filler is just a generic Cobol, look, I'm holding

4   some space in memory here but I'm not going to bother to name

5   it because I'm not going to refer to it directly.

6   So if you can scroll to where you show some of

7   those. Go back farther nearer the top of the program in the

8   first few pages. A little bit more up -- or down, either way.

9   Go down a little bit.

10   Okay. So you see that both programs, for instance,

11   on line 148 on the left-hand side use an 03 level of filler

12   that's ten bytes long.

13   That's just saying that we are reserving ten bytes

14   of space here, but the program is not going to handle the data

15   in that space so we don't need to name it.

16   Q   Okay. And I think you mentioned it, but are you aware of

17   Professor Astrachan's comments that both programs are similar

18   in some ways because of an API?

19   A   Yeah, he's talking about the programming interface to

20   that -- so program that we were just talking about --

21   Q   Can you refer us back to that?

22   A   I can. I think you got there faster than I did last time

23   though.

24   If you go to page 29 again, you see that call to the

25   program PTPSQLRT that I just mentioned.

1   Q   Okay. And what's that?

2   A   That's a subprogram. It's an Oracle-supplied subprogram

3   that allows these Cobol programs to communicate with the

4   database using SQL commands.

5   And in order to talk to that program at all, you

6   have to send it messages that it understands. So the messages

7   a program understands, the format of its invocation and what

8   it expects as parameters, are called the API or Application

9   Programming Interface.

10 Q   And do you agree that both the file found on Rimini's

11 systems and the Oracle file are constrained in some way by

12 this API?

13 A   Yes.

14 Q   And --

15 A   In some ways they are constrained and in some ways they

16 are not. As we just discussed, you have to have the

17 parameters but you don't have to have the same names.

18 Q   Overall did you find substantial similarity between the

19 file found on Rimini's systems and the file found on the

20 Oracle file?

21 A   I found sufficient similarity that I found it to be

22 substantial, yes.

23 Q   And what do you mean -- what does that mean,

24 substantially similar?

25 A   That there are portions of the two programs that are

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1   similar, and they are similar without any explanation that can

2   be attributed to constraint or a specific invention.

3   Q   Okay. I would like to -- oh, last question. Do you know

4   whether or not the file found on Rimini's systems, the

5   RSPCMPAY.cbl file, was distributed to any Rimini customers?

6   A   The file transfer logs that I reviewed -- and I'm not

7   sure that they are complete necessarily, but they showed that

8   this file was distributed at least 14 times to seven different

9   customers.

10 Q   Okay. I'd now like to return to your demonstratives and

11 slide 21. Is there a final component to your second opinion

12 that Rimini's post-injunction conduct does not conform to

13 paragraph 5 of the injunction?

14 A   Yes. Another example is that Rimini created and

15 distributed derivative 1099 update for Easter Seals.

16 Q   And before discussing this specific update, as a general

17 matter what do you consider to be derivative works of Oracle's

18 PeopleSoft software?

19 A   They could fall into several categories. They could be

20 work that was derived directly by copying of Oracle source

21 code and incorporating that into Rimini's source code.

22   But because the -- some of the Rimini updates depend

23 totally on the underlying PeopleSoft environment and include,

24 for instance, elements when they run from that environment,

25 they can't run without that environment and serve as

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1   extensions and modifications to that environment. It's my

2   understanding that those kinds of changes are also derivative

3   works.

4   Q   Okay. In connection with your review of Rimini's support

5   practices, did you find instances where updates that you

6   consider to be derivative works under your definition were

7   created by Rimini in one client's environment and then used in

8   another client's environment?

9   A   Yes, they were.

10   Q   And are we going to discuss some of those examples later

11   today?

12   A   I believe so, yes.

13   Q   All right.

14   A   And just to finish off the last part of the previous

15   question, I also considered a derivative work once those

16   updates are applied to an environment to modify the PeopleSoft

17   environment such that the PeopleSoft environment, or

18   application as a whole, becomes -- once it's modified, is a

19   further derivative work from that environment, so really kind

20   of three specific cases.

21   Q   Okay. With respect to this particular opinion, 2(d),

22   what kind of update was this, this 1099 update?

23   A   This was an update that modified the 1099 form and

24   allowed printing to that modified 1099 in response to some

25   change in federal regulations.

1   Q   Okay. And let me direct your attention to Exhibit 90,

2   which has been pre-admitted. What is Exhibit 90?

3   A   Exhibit 90 is an e-mail exchange between Rimini and

4   Easter Seals that concerns this particular 1099 update.

5   Q   Okay. And the subject of the e-mail says, "Redelivery of

6   1099 update RS18F07." Is that the update we're talking about?

7   A   Yes, and just to be clear, this Exhibit 90 also contains

8   the actual update. It's the e-mail plus the attachments.

9   They were all packaged together in a lump in this exhibit.

10   Q   Okay. And was this update a single file update or a

11   bundle of files?

12   A   This was a bundle.

13   Q   And if you look at page 195 of 197 of this document, what

14   is this page?

15   A   This says "Financials and Supply Chain Management Release

16   RS18F07 Object Summary.

17   Q   And what is an object summary?

18   A   It's a list of the various components that are included

19   as a part of a bundle.

20   Q   Okay. And if you go forward two pages, is there a

21   listing of the components of this update bundle?

22   A   Yes. Here you see on this page that the update bundle

23   includes three data mover scripts, two SQR programs, and a

24   number of graphical interface files.

25   Q   Okay. And a dms script is a source code file with dot

1   dms after it; is that right?

2   A   Yes.   It's a proprietary Oracle source language that's

3   used for the scripting of its data mover application.

4   Q   And then the objective type, SQR, has RSI1099I and 1099M.

5   Are those also source code files?

6   A   Yes, these are the two reporting files that would print

7   the data on the respective forms.

8   Q   Going to page -- it's Exhibit 90, page 218.

9   A   Are you Bates ending 218?

10   Q   Yes, sorry, Bates page ending 218.

11   A   Okay.   That's fine.

12   Q   Yeah, so Bates page ending 218 through 234, I believe --

13   yeah.   So Bates page ending 218 to 234, what is this component

14   of this exhibit?

15   A   This is the SQR file, the reporting file that prepares

16   the RSI1099I form.

17   Q   Okay.   And then following that, page -- Bates page ending

18   235 to 250, what is that portion of this exhibit?

19   A   This is the SQR for the program that prints the 1099M

20   file, or the content into the 1099M form.

21   Q   Okay.   Do you have an opinion as to whether or not this

22   entire update bundle, which is named RSI -- RS18F07 is a

23   derivative work?

24   A   I understand it to be, yes.

25   Q   Why do you understand it to be a derivative work?

1   A   This is a change that modifies the printing for some

2 federal forms in the PeopleSoft environment, but it is a

3 modification and extension of that PeopleSoft environment that

4 would be used by a customer to perform preparation of its

5 various tax forms.

6   Q   Would this update have any use outside of PeopleSoft?

7   A   Both of these programs, if you look at them, include

8 PeopleSoft required -- or PeopleSoft provided SQCs, that is to

9 say the copy functions that are re-usable code from

10 PeopleSoft, and these programs depend on the PeopleSoft

11 environment and the presence of that PeopleSoft code in the

12 program when run in order to be able to perform their

13 operation. Without the PeopleSoft environment they wouldn't

14 even compile, let alone run.

15   Q   Okay. Do you have an opinion as to whether or not the

16 SQR files, the 1099I and M files, are also derivative works?

17   A   They are in the sense that they are developed

18 specifically to use that environment.

19   But these appear to be files that Rimini wrote so I

20 would consider them derivative works of the PeopleSoft

21 environment but not containing Oracle code.

22   Q   How do the RSI1099M and RSI1099I files extend the

23 features and functionality of the PeopleSoft software?

24   A   Well, just for example, if you go to page 11 of 197,

25 you'll see that the 1099I file starts with a description of

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1   what the program's functions are in that top comment box.

2   So if you could just blow that up so it could be

3   seen.

4   So you see here that at some point in time in 2011

5   these were created as a replacement for the prior Crystal

6   reports reporting functionality that was provided.

7   And then they underwent a series of modifications

8   pretty much year to year here, 2012, 2013, 2014, 2015, to add

9   code to print on a particular file, it looks like they're

10   changing the year for the particular 1099-INTEREST form each

11   year.

12   And then in 2018 there was an actual modification to

13   the layout of the federal form, and so there were additional

14   changes related to that.

15   Q   What's the significance of the fact that in 2011 this

16   file was created to replace a Crystal report or Crystal

17   report?

18   A   Well, it just means that this file was created to replace

19   the prior reporting capabilities in the PeopleSoft environment

20   for preparing this particular form.

21   Q   Okay. And so why do you say that this file extended the

22   features or functionality of PeopleSoft?

23   A   Well, it replaced functionality that was already in

24   PeopleSoft to print the 1099 form, and so it really just sort

25   of transformed that functionality by replacing the program.

243

1   Q   Okay. Why do you consider, for example, this 1099I file

2   shown on page 218 to 234, to be a derivative work?

3   A   Well, again, it drives from the PeopleSoft environment.

4   If you scroll down a few more lines, if you can

5   blowup the line that says include setenv.sqc, this is an

6   include that calls into this program before it's run SQC code

7   that is provided by Oracle for the specific purpose of setting

8   environmental variables which could include both the setting

9   of, for instance, the language and also settings related to

10 the interaction with the PeopleSoft environment.

11   And similarly, if you go to the last page of

12 this --

13   Q   Wait. Let me just stop you there.

14   So the s-e-t-e-n-v dot s-q-c, that's an Oracle file?

15   A   That is correct, yes.

16   Q   And the #include in this Rimini written program calls

17 that Oracle file into the program?

18   A   Yes. Just like the copy that we look at in the Cobol

19 program copies Oracle -- Oracle or Rimini written code into a

20 Cobol program, frequently used pieces, in an SQR code you use

21 an SQC.

22   Q   And is this s-e-t-e-n-v dot s-q-c, Oracle code

23 significant in any way?

24   A   Yeah, it allows you to set the environmental variables in

25 which the program is running.

1   Q   Okay. You were about ready to go to some further

2   examples, I think.

3   A   Yeah, and you see this particular include in virtually

4   every PeopleSoft file. I don't think I've seen one that

5   doesn't have it yet. It's used that widely.

6   If you go to the end of this program, which I think

7   it's around page 35.

8   Q   I think this program ends on page 234.

9   A   Okay. If we could go to the end of it.

10   Yeah. You see here there are four additional

11   PeopleSoft includes. The prcsapi, for instance, allows to you

12   interact with the process scheduler.

13   Current datetime gives you the ability to get the

14   current date and time. Datetime.sqc lets you do formatting

15   for date and time so that you can control the format that's

16   going to be displayed.

17   And prcsdef is used to update process requests in

18   the variable definitions.

19   Q   So these dot SQC files are PeopleSoft source code that is

20   drawn into this Rimini program?

21   A   Right. The program can't run without these inclusions.

22   So as a first step, when the program is being

23   prepared to be used, these inclusions are pulled in, just

24   like -- almost like that list file we looked at yesterday.

25   So they're pulled in as a part of the code for this

1   program, and then when the program runs it uses the functions

2   provided by these common elements.

3   Q   How does this incorporation of Oracle source code into

4   the Rimini program occur? What's the mechanics of it?

5   A   The -- during the preparation for running the program the

6   content of these -- the source code lines in these SQC files,

7   and they are source code lines, are merged together with the

8   lines in this program at the appropriate point in the program.

9   And then throughout the program it may refer to

10 functionality that are provided or data elements that are

11 provided by the various SQCs that are called in.

12 Q   Okay. So if you ran a copy of the RSI SQR program, would

13 that cause a copy of the Oracle source code contained in the

14 dot sqc files to be incorporated into the RSI1099I program?

15 A   It would be copied into the program, and then when -- and

16 translated when the program was prepared as executable machine

17 instructions.

18 Q   If you tested the RSI1099I.sqr program, would that cause

19 a copy of the Oracle source code contained within these SQC

20 files to be incorporated into the RSI1099I program?

21 A   Well, again, when you test it, you're running the

22 computer-readable version so you would first copy the

23 program -- copy the source code in and then prepare it for

24 running and run the corresponding computer readable version,

25 just to be clear of the distinction there.

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1   Q   Did you also observe #include statements in the

2   RSI1099M.sqr file which begins on 235?

3   A   Yes.

4   Q   And did you observe essentially the same #include

5   statements in the 1099M.sqr file?

6   A   Yes, I did.

7   And this is just a sample of the SQC files. There

8   are other SQC files in these files as well, but the same ones

9   occur in the second program.

10   Q   So given these #include statements in both the 1099M and

11   1099I files, do you have an opinion as to whether or not the

12   1099I and -M files substantially incorporate Oracle protected

13   expression?

14   A   Yes. The updates that result from these files

15   incorporate protected Oracle expression that's a part of the

16   PeopleSoft environment, and they also rely and run on the

17   PeopleSoft environment infrastructure that's provided by

18   Oracle.

19   Q   Is this bundle of updates called RS18F07 the only update

20   you identified in your review of Rimini's works that you

21   considered to be a derivative work?

22   A   No.

23   Q   Do you have any opinions as to whether or not Rimini must

24   use Oracle's utility tool software in order for Rimini source

25   code or Rimini files to be considered derivative works?

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1   A   I wouldn't think that that was the only condition under

2   which they could be derivative works, but because these use

3   the underlying tooling architecture of PeopleSoft -- or, in

4   the case of JDE, of the JDE environment -- there would -- I

5   haven't seen any specific examples that don't use those

6   underlying tooling.

7   Q   So does this RS18F07 update also, in your opinion, use

8   PeopleSoft utility tools?

9   A   Yes.

10   Q   How so?

11   A   It uses -- first of all, the PeopleSoft environment, the

12   tools that are provided within that environment -- for

13   example, you know, we looked at the use of that subroutine

14   that Oracle provides as a tool to communicate with the

15   database.

16   But if we go back to page 197 of 197 in the list of

17   objects, we also see that it uses data mover scripts, and,

18   again, these are scripts that in order to run rely on the data

19   mover tool.

20   Q   Is a data mover script a PeopleSoft utility tool?

21   Sorry, Is the data mover script a PeopleSoft utility

22   tool?

23   A   The data mover --

24   COURT REPORTER: Sorry. I didn't hear the

25   question.

1 BY MR. SMITH:

2   Q   Is the data mover script a PeopleSoft utility tool?

3   A   The data mover script is a PeopleSoft language. The data

4 mover script uses the data mover tool.

5   Q   Okay. Do you understand Rimini's contentions regarding

6 the use of tools with respect to this update, RS18F07?

7   A   I do, yes.

8   Q   And what do you understand those contentions to be?

9   A   That generally that this is Rimini created source code

10 that we see in these individual files and therefore not

11 created with the tools. I don't think they specifically

12 address using the tools.

13   Q   And you disagree with their points on use of the tools?

14   A   Well, it's clear that these programs use the PeopleSoft

15 environment tools and the data mover tool.

16   Q   Okay. Going on to a topic that was discussed during

17 opening statements, do you recall being asked at your

18 deposition if you considered PeopleSoft to be a derivative

19 work of an operating system?

20   A   I do recall that discussion, yes.

21   Q   And do you have an understanding as to why Rimini was

22 asking you that question?

23   A   My understanding is that they were trying to draw a

24 parallel between PeopleSoft running in an operating system and

25 their own code running in the PeopleSoft environment, and

1   essentially saying that, you know, viewed from that

2   perspective, any piece of software that runs on a computer

3   system is a derivative work of its operating system and

4   therefore it would be absurd for me to assert that code that

5   Rimini had written was a derivative work of the PeopleSoft

6   environment, or JDE environment, depending on which code it

7   was.

8   Q   And why do you disagree with that contention or

9   suggestion?

10   A   Well, there's a couple of things. You know, on its face,

11   first of all, PeopleSoft is designed to run on a couple of

12   different environments. It's not locked into, for instance,

13   the Windows operating system.

14   As with any computer program, it interacts with some

15   operating system in order to access the underlying hardware,

16   for instance the memory or the storage units on the computer,

17   the hard disks.

18   But it is a stand-alone application or suite of

19   applications, really, that is designed to run on multiple

20   operating systems.

21   So as a first point of difference, it's not married,

22   specifically, to a single operating system.

23   Q   And go ahead, are there other points of difference?

24   A   Well, I think that's one of the principal differences.

25   You know, another difference would be were Rimini's

1   position that all software is derivative of an operating

2   system need to be taken at face value, or their supposition --

3   or apparent supposition in my deposition, there could be no

4   copyright of an independent computer program which I think

5   would be orthogonal to the law as I understand it today.

6   Q   Okay. Do you have an understanding of where Rimini

7   stored or held this RS18F07 update?

8   A   RS18F07 was found within the attachments, or was -- I'm

9   sorry, was sent to a client as an attachment, so this tells me

10 it must have been on Rimini's systems somewhere to have been

11 provided as that attachment.

12 Q   Do you have an understanding of where Rimini claims to

13 have developed this update?

14 A   That's a little bit different because Rimini says that --

15 I think initially they said that they developed this on their

16 own system, but then some of the related development records

17 indicate that it was actually developed in part at two

18 different locations.

19   Parts of it, the sqr code, were developed at Easter

20 Seals, and then the dms code -- or at least two of the dms

21 files were developed at O-a-k --

22   MR. VANDEVELDE: Objection, your Honor. I'm not

23 sure what document she's looking at and reading from. I don't

24 believe they may be in the record.

25   So if she's going to be reading from documents,

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1   I'd like to know what she's reading from because I believe

2   that these opinions may not be -- have been disclosed.

3   THE COURT: Sustained. Let's clarify that.

4   MR. SMITH: Yes. So, your Honor, this relates

5   to three documents that were marked on Rimini's exhibit list,

6   and they were -- that was the first time, I think, that they

7   were identified on their exhibit list.

8   They were not considered by

9   Ms. Frederiksen-Cross in connection with her opinions -- with

10   respect to her reports, but after the exhibit lists were

11   exchanged by the parties, she did consider these exhibits to

12   address the questions that your Honor posed in your Honor's

13   order to show cause ruling, which was I need to know where

14   these files came from, I need to know where these files were

15   developed.

16   And so in that regard we would like to discuss

17   Defense Exhibits 602, 603, and 604, with

18   Ms. Frederiksen-Cross.

19   MR. VANDEVELDE: First of all, your Honor, I

20   would appreciate it that if the witness is going to be reading

21   from documents, then counsel needs to identify them before she

22   starts doing so.

23   Second of all, those documents were struck by

24   your Honor because of their improper supplemental report that

25   your Honor granted on emergency motion to strike.

1   She should not be able to read from documents

2   that your Honor has struck and the report from which they were

3   cited that your Honor struck.

4   THE COURT: I agree. The Court's order was that

5   those documents were stricken pursuant to the objection that

6   was raised, and she should not therefore be referring to

7   those.

8   MR. SMITH: Understood.

9   BY MR. SMITH:

10   Q   To your knowledge, Ms. Frederiksen-Cross, was this 1099

11   update bundle distributed to clients other than Easter Seals

12   (inaudible)?

13   A   It is my recollection that they were, yes, that they were

14   broadly distributed because they were 1099 federal forms.

15   MR. VANDEVELDE: Your Honor, I apologize. But I

16   can tell the witness is reading from documents when she's

17   answering. I have no idea what she's reading from. If

18   counsel could please ask her so that the record is clear.

19   She's essentially reading from documents, and I

20   don't know what they are.

21   THE COURT: All right. Let's clarify that,

22   please, Mr. Smith.

23   MR. SMITH: Yes. I was not asking about any

24   documents. I was just asking her if she had an understanding

25   as to whether or not this update that was sent to Easter Seals

1   as shown in Exhibit 90 was sent to other Rimini clients.

2   MR. VANDEVELDE: Your Honor, I apologize again,

3   but she's clearly reading from something. I would like to

4   know what she's reading from.

5   THE COURT: All right. You may question her

6   with regard to that.

7   BY MR. SMITH:

8   Q   Ms. Frederiksen-Cross, what do you have in front of you?

9   A   I have an e-mail that was transmitting these files to

10 Easter Seals, and I was just reviewing that e-mail to refresh

11 my recollection of whether it specifically said that this 1099

12 form was distributed to other U.S. customers.

13   MR. VANDEVELDE: What Oracle exhibit number or

14 exhibit number is that?

15   THE WITNESS: It's OREX_0090, the first couple

16 pages that are the e-mail that attaches this package.

17   MR. VANDEVELDE: Hold on one second, your Honor.

18   Okay. Your Honor, I believe that file is also

19 on the struck list, the list of files that Oracle attempted to

20 attach.

21   Also, if the witness is going to be reading from

22 documents, she can't self-refresh her recollection without us

23 knowing what she's refreshing her recollection with.

24   So, if Mr. Smith wants to, each time she's

25 reading from a document, please provide us a copy of what

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1   she's refreshing her recollection with, that would be fine,

2   but it is improper for a witness to be reading from documents

3   that I can't tell what she's reading from.

4   THE COURT: Well, that's a fair request.

5   Mr. Smith, I would ask that you do provide the

6   defense copies, to the extent that you can, when --

7   MR. SMITH: Yes, your Honor. She's reviewing

8   Exhibit 90 which we just spent 30 minutes discussing, and they

9   have the binder just as the witness does, as I do. There's

10   nothing else before her other than the exhibit book.

11   THE COURT: All right. Mr. Vandevelde, does

12   that answer your concern?

13   MR. VANDEVELDE: I would like every single

14   document that she is reading from to be identified on the

15   record. Otherwise, I can't tell what she's looking at.

16   She just testified under oath that she was

17   refreshing her recollection with some e-mail that I have no

18   idea. So if Mr. Smith could just identify --

19   THE COURT: I hear you.

20   Ms. Frederiksen-Cross, if you're using some note

21   materials or exhibit materials to refresh your recollection, I

22   would ask that you tell us what those are as you --

23   THE WITNESS: Of course.

24   THE COURT: -- as you respond.

25   THE WITNESS: And that's probably the easiest

1   way because, if I'm looking at this e-mail, you know, I know

2   what I'm looking, but obviously if I'm just checking to

3   refresh my recollection, counsel may not even know what I'm

4   looking at.

5   So, I'll just read the beginning Bates number

6   into the record if that's acceptable.

7   THE COURT: That should satisfy.

8   MR. VANDEVELDE: Yes, your Honor, thank you.

9   MR. SMITH: And just to be clear, your Honor,

10   Exhibit 90 was admitted.

11   THE COURT: No, no, I know that.

12   BY MR. SMITH:

13   Q   Okay. Ms. Frederiksen-Cross, returning to your

14   demonstratives and slide 8, can you tell us what your third

15   opinion is in this matter.

16   A   Yes. This addresses the cross-use of environments of one

17   customer for the benefit of other customers specifically in

18   development, testing and troubleshooting.

19   Q   And you use the term cross-use. What is your

20   understanding of the term cross-use?

21   A   Performing development, testing, and troubleshooting in

22   one client's environment on behalf of one or more other

23   clients who are not that same licensee.

24   Q   Okay. Are there different components to this third

25   opinion?

1   A   Yes, there are, as you see on my slide here.

2   Q   And can you advise the Court and read into the record

3   what your components are.

4   A   Sure. These examples I would give, that Rimini used the

5   PeopleSoft environment associated with City of Eugene to

6   testify on the rsi940a.sqr which was a part of the HCM200049

7   update.

8   And they used the City of Eugene's environment for

9   the testing specifically on behalf of an update provided to

10   customers Spherion and Smead is the first example.

11   The second deals with the same program and the City

12   of Eugene's use of the PeopleSoft environment to test that

13   file for customer Matheson Trucking.

14   The third example is Rimini's use of City of

15   Eugene's PeopleSoft environment in order to assist in fixing a

16   bug, that is to say troubleshooting and fixing a problem,

17   regarding the printing of a W2 form for Johnson Controls.

18   And the final example is Rimini's use of the -- a

19   customer's environment to develop one of their "one code for

20   all" fixes, that is to say a file that would be shipped to

21   many customers, specifically for the file rsiqtrtx.sqr which

22   is a part of HCM200105.

23   Q   Okay.

24   A   And the supplying of that file to Rockefeller Group and

25   Home Shopping Network.

1   Q   Let's start with the first component of this opinion

2   regarding the use and of the PeopleSoft environment associated

3   with the City of Eugene to test the rsi940a.sqr file.

4   Was this update, HCM200049, a bundle update or was

5   it a single file?

6   A   My recollection is that that was a bundle update.

7   Q   And did that update include Rimini written code or Oracle

8   written code?

9   A   I believe that was Rimini written code.

10   Q   Do you, nonetheless, consider the rsi940a.sqr file to be

11   a derivative work?

12   A   Yes, again, because it --

13   MR. VANDEVELDE: Objection, your Honor. She's

14   offered no opinion about whether this file is a derivative

15   work in any of her multiple expert reports, her declaration.

16   It's never been offered before. It's a Rule 26

17   violation, self-enforcing. She should not be permitted to

18   testify as to whether this file is a derivative work.

19   THE COURT: Mr. Smith?

20   MR. SMITH: Yes, your Honor. I believe the

21   witness has basically already testified that most, if not all,

22   Rimini updates are derivative works because of the

23   incorporation of PeopleSoft or other Oracle copyrighted code.

24   So I don't think that this opinion is much different than what

25   she's already testified to.

1   MR. VANDEVELDE: Your Honor, as to this

2   particular file she has not offered any opinion that it's a

3   derivative work in any of her disclosed expert opinions

4   throughout multiple reports.

5   The testing regarding "all files," that -- she

6   can't testify generally and then not testify about the

7   specific issue that your Honor raised in issue number two

8   regarding Matheson Trucking regarding this particular file.

9   There's been no disclosure of this, no

10   opportunity for our expert to rebut it, no opportunity to

11   depose her on whether or not this file is a derivative work.

12   This is yet again another undisclosed opinion

13   that we have no ability to cross-examine her on. It's also

14   outside the scope of your Honor's order to show cause.

15   MR. SMITH: Just one response to that.

16   So in paragraph 210 of her expert report, she

17   referred back to her reports in Rimini II indicating her

18   opinions about Rimini's creation of derivative works.

19   And she indicates in her report that,

20   "Rimini creates derivative works when it

21   modifies and extends PeopleSoft environments and that

22   Rimini's updates," plural, "are derivative works

23   because they extend the features and functionality of

24   the existing PeopleSoft software, rely for their

25   operation on the underlying PeopleSoft architectural

1   framework, and do not operate independently from the

2   PeopleSoft components upon which they rely, and that

3   Rimini applies updates to existing environments

4   resulting in the creation of derivative PeopleSoft

5   environments."

6   So this has been disclosed with respect to

7   updates as a whole. This is just one of many updates.

8   MR. VANDEVELDE: Your Honor, the issue here is

9   that the critical aspect is the content of the file, right?

10   What is her opinion, if she has ever disclosed one, on

11   contents of the file. There are millions -- literally

12   millions of files at issue.

13   That general statement about derivative works

14   and her understanding of derivative works, that does not

15   suffice under Rule 26 to disclose her actual opinions.

16   There has never been an opinion on the contents

17   of this file. She's never gone through it. There's no

18   side-by-side comparison of anything. There's no analysis of

19   what portions make it a derivative work.

20   We have never heard as to this file any analysis

21   as to the contents of this file in a derivative work. It's an

22   undisclosed opinion yet again. I mean, it has been a pattern

23   now where they are trying to back-fill.

24   Your Honor will recall during opening I made a

25   number of representations about how they had not done this

1   analysis. They have not done this analysis, and now they are

2   trying to back-fill this with live testimony which is

3   completely improper because they're not disclosed.

4   THE COURT: Mr. Smith?

5   MR. SMITH: We're not trying to back-fill

6   anything. This is a mere continuation of the same opinion she

7   has put forth for approximately two years, or year-and-a-half

8   at least.

9   It's simply a reference to the question of the

10   file. It's not directly material to this violation. I was

11   just asking a question.

12   MR. VANDEVELDE: And, your Honor, I'll just note

13   your Honor wrote that your Honor not make a blanket ruling as

14   to every file and whether it's derivative work, and that was

15   for a reason, because we need to go through the actual file

16   and the actual content of the file.

17   There's never been an analysis of the content of

18   this file and a lot of the files that we've talked about.

19   THE COURT: I'm going to sustain the objection.

20   MR. SMITH: Yes, your Honor.

21   BY MR. SMITH:

22   Q   Why is it your opinion, Ms. Frederiksen-Cross, that the

23   provision of this rsi940a.sqr file or update to Spherion and

24   Smead demonstrates cross-use?

25   A   Well, in the specific instance of these two customers,

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1   the file had already been developed and tested prior to its

2   provision to Spherion and Smead.

3   Q   And if I could direct your attention to Oracle Exhibit 21

4   which I hope you can find.

5   A   I have it.

6   Q   Okay. What is Exhibit 21?

7   A   Twenty-one is an e-mail exchange discussing the need to

8   provide this particular update to Spherion and Smead. It's

9   dated 25 January 2019 in the late -- in the most recent part

10   of the e-mail exchange.

11   Q   Okay. So directing your attention to the page ending

12   452, near the end do you see an e-mail from Kishore Bandaru of

13   Rimini to Tim Pringle and Don Sheffield of Rimini dated

14   January 24th, 2019, which reports on, quote, "alignment issues

15   after applying new 940 2018 GIF files for both clients SPH and

16   SME"?

17   A   Yes, I see that, counsel.

18   Q   And what do you understand the reference to "alignment

19   issues after applying new 940 2018 GIF files" to refer to?

20   A   Well, the GIF files are the image of the form, I mean, a

21   blank form, if you will, and so obviously there's been a

22   change, there are new GIF files.

23   And, now, when the program that prints to those GIF

24   files, is attempting to print to it, there are some alignment

25   irregularities.

1   And I think if you think back to the opening, you'll

2   recall that we saw an example of alignment irregularities, or

3   a couple of examples, where the printing isn't quite properly

4   lined up with the boxes.

5   Q   Okay. And do you have an understanding as to SPH and SME

6   refer to?

7   A   That is the customers Spherion and Smead.

8   Q   Does this exhibit that we've marked as Exhibit 21 show

9   how Rimini first attempted to fix the reported alignment

10 issue?

11 A   Yeah, it appears that they first attempted to fix the

12 actual form itself by getting another version of the GIF file,

13 to see if that would work property.

14 Q   And did that work?

15 A   No. If you go forward in time in the -- come more recent

16 in time, you see that there are still alignment issues after

17 they try a couple of rounds of that, and so finally they say

18 that they're going to need to modify the code.

19 Q   Okay. And So directing your attention to the page ending

20 in 446, do you see the e-mail from Mr. Sheffield to Tim

21 Pringle stating,

22   "I have looked at the program rsi940a.sqr,

23   and I believe that whatever alignment issues we have

24   with the latest version of the GIF file that I sent

25   you earlier we can resolve with a code change to the

1   rsi940a.sqr program."

2   What's your understanding of the term "code

3   change to the 940a.sqr program"?

4   A   This just means that they need to go into the program

5   itself and change something in the print function so that they

6   can correct the alignment problem.

7   Q   And based upon your review of the evidence, did Rimini

8   end up making a code change to the rsi940a.sqr program?

9   A   Yes.

10   Q   And based upon your review of the evidence, did Rimini

11 test the update after making the code change?

12   A   This document that we're looking at, if you go to page 3,

13 indicates that it was testified in City of Eugene's

14 environment, that's C-O-E-X, which is near the bottom of page

15 3.

16   Q   So you're referring to the e-mail from Don Sheffield to

17 Tim Pringle dated January 24th at 9:56 p.m.?

18   A   That is correct, yes.

19   And I think if you go forward one more page to page

20 2, there's another e-mail from Don Sheffield to Tim Pringle

21 again reiterating that he's completed the testing in City of

22 Eugene.

23   Q   Okay. And this e-mail, the first e-mail indicating

24 testing in the City of Eugene was on Thursday, January 24th,

25 and then it looks like testing was completed on Friday,

1   January 25th, according to Mr. Sheffield?

2   A   Yeah. He says that at that point he had completed the

3   testing and now rolled the two GIF files and the modified

4   version of the program out to all U.S. clients excluding those

5   that had gotten a previous update 2018-B.

6   Q   Okay. On the bottom there where you're referencing, what

7   does the phrase,

8   "I have now rolled the two GIF files and the

9   modified version of the rsi940a.sqr program out to

10   all U.S. clients," mean to you?

11   A   That indicates to me that they had distributed this file

12   to all U.S. clients, though you see the parenthetical that it

13   excludes some clients, those that had received Oracle update

14   2018-B, so all of the clients except those who had received

15   that Oracle update.

16   Q   And then there's a further statement that,

17   "I also noticed that the scope in Jira for

18   HCM 200049 is set to just Spherion."

19   What does that refer to?

20   A   It seems to be Rimini's normal process to indicate in

21   Jira the scope of those clients that would be affected by a

22   particular change, so who the change was being developed for

23   or who the change would be applied to.

24   Q   So is it your understanding that prior to the time the

25   testing in the City of Eugene environment was conducted that

1   the scope set in Jira was simply for one customer?

2   A   Yes, just for Spherion, so not for City of Eugene and not

3   for Smead at that point in time.

4   If you read on the next page, he says shouldn't the

5   scope also include Smead.

6   Q   Okay. And does this evidence indicate that the HCM200049

7   update was to delivered to Spherion and Smead?

8   A   I believe that it does, yes.

9   Q   If you look at the very first page, the first e-mail,

10   there's a statement from Mr. Sheffield saying, "Yes, it is

11   there for both in the Dev folders"?

12   A   Yes. On the previous page they say, "I would like to

13   deliver to it Spherion and Smead today as an informal update."

14   And then if you move forward time, he says, "Yes,

15   it's there for both in the Dev folders."

16   Q   Are you aware of Rimini's contention that it tested the

17   HCM200049 update in the Smead and Spherion environments?

18   A   I aware of that, yes.

19   Q   Have you seen any evidence that Rimini did in fact test

20   the HCM200049 update in the Spherion and Smead environments

21   either before or after delivery of the updates to Spherion and

22   Smead?

23   A   My recollection is --

24   MR. VANDEVELDE: Your Honor, objection again.

25   She has no opinion on whether this update is tested or not.

1   It's not disclosed in her original report, her rebuttal

2   report, her declaration. She's never offered an opinion about

3   testing in Smead or Spherion.

4   Again, it's another attempt back-fill holes in

5   her analysis to now supplement and say that on the fly she's

6   going to offer new opinions testing. It's not in her reports.

7   THE COURT: Mr. Smith?

8   MR. SMITH: I believe that it is in her report

9   about testing, and that's one of the bases that this has been

10   identified as an instance of cross-use.

11   MR. VANDEVELDE: Your Honor, I'm looking at the

12   paragraph of her report that references Smead and Spherion.

13   It's one paragraph. There's no reference to testing

14   whatsoever. It's paragraph 275 of her opening report.

15   MR. SMITH: Yeah. So she talks in 272 about

16   several instances of Rimini leveraging its work for prototype

17   customers, to reduce the labor and shorten the time for

18   testing updates for other customers.

19   And then in Exhibit -- I'm sorry, in paragraph

20   275 of her report, in footnote 282, she specifically discusses

21   this exhibit which we were discussing, Exhibit 21, which

22   discusses testing.

23   MR. VANDEVELDE: Your Honor, 272 is a broad

24   statement about leveraging work, alleged, for one client to

25   support some other client.

1   275 is specific to Smead and Spherion. It's the

2   only disclosure in her report. There is no discussion

3   whatsoever about testing.

4   They have another theory about development which

5   she has testified. Her theory is that the development for --

6   in City of Eugene is somehow cross-use.

7   But there's no opinion about testing. They

8   cannot make a broad statement in an expert disclosure, like in

9   paragraph 272, and then not disclose the specific bases as to

10   the issue your Honor asked about that is set for this hearing.

11   This one is testing. There's no opinion about

12   testing being disclosed before.

13   MR. SMITH: May I respond to that because I

14   failed to mention a paragraph.

15   So the very paragraph after her discussion of

16   Exhibit 21, and Spherion and Smead in particular, says,

17   "These instances suggest to me that Rimini

18   uses the Windstream environment of the City of

19   Eugene, the City of Eugene environment, as a general

20   testing environment even where customer City of

21   Eugene, Oregon, was not the customer requesting the

22   update."

23   MR. VANDEVELDE: Again, your Honor, a broad

24   statement -- they are -- under Rule 26(a)(2), you're required

25   to disclose the bases for your opinions.

1   We have been calling out Ms. Frederiksen-Cross

2   for years about not providing specifics, whether it's

3   analytical dissection, whether it's analysis of source code

4   files, or whether it's regarding testing theories or others.

5   They cannot make a broad statement and then now,

6   at trial, in live testimony, disclose new opinions that have

7   never been disclosed. The rule is self-executing. It must be

8   stricken.

9   THE COURT: Your objection is overruled,

10 Mr. Vandevelde.

11   I believe this issue has been sufficiently in

12 front Rimini on that. I fail to see any prejudice from this.

13 I believe they would have had a complete opportunity to

14 conduct discovery on this, including depositions of

15 Ms. Frederiksen-Cross that, in fact, occurred. Under the

16 circumstances, I believe this is fair examination.

17 BY MR. SMITH:

18   Q   And so I don't know if we got an answer to the question,

19 Ms. Frederiksen-Cross.

20   Are you aware of any evidence that Rimini did in

21 fact test this update in either Spherion or Smead's

22 environment prior to or after the delivery of the update?

23   A   No evidence that they tested it prior. I'm aware that

24 Rimini has asserted that they tested it, but I haven't seen

25 that specific evidence.

1   Q   If Rimini did test the update in the Smead and Spherion

2   environments, would it change your opinion that this conduct

3   is inconsistent with paragraph 4 and 6 of the injunction?

4   A   No, because it still is reusing a fix that was developed

5   in another environment for those environments.

6   Q   Are you aware of any evidence indicating that the City of

7   Eugene needed this particular update?

8   MR. VANDEVELDE: Objection, foundation.

9   BY MR. SMITH:

10   Q   I'm simple asking have you seen any evidence indicating

11   that the City of Eugene needed this update?

12   A   No.

13   Q   Would testing of this update in the City of Eugene's

14   environment, as shown by Exhibit 21, involve use of the

15   PeopleSoft software in the environment associated with the

16   City of Eugene?

17   A   It would necessarily have done so, yes, because this file

18   requires those inclusions to interoperate in the PeopleSoft

19   environment.

20   Q   Would testing of this update in the environment

21   associated with the City of Eugene involve a reproduction of

22   PeopleSoft software in that environment?

23   A   Yes. The PeopleSoft software, both for the PeopleSoft

24   environment and for this specific program, would necessarily

25   have been reproduced into memory in order to effect a test.

1   It would be the computer-readable version, not the source code

2   version that was replicated during testing.

3   MR. SMITH: Your Honor, if it's a convenient

4   breaking point, this might be a good breaking point.

5   THE COURT: All right.

6   I was looking for such a moment, and we

7   obviously have one. We will reconvene at 10:45.

8   (A recess was taken.)

9   THE COURT: Have a seat, please.

10   All right. We have concluded our morning break.

11   Let's proceed, please, Mr. Smith.

12   MR. SMITH: Thank you, your Honor.

13   BY MR. SMITH:

14   Q   Ms. Frederiksen-Cross, based upon your review of Rimini's

15   support practices, have you noticed that Rimini uses the

16   City -- the environment associated with the City of Eugene,

17   more than other environments for development and testing?

18   A   More than most others, yes.

19   Q   And do you have an opinion as to why that is?

20   A   My understanding is that some environments or easier for

21   Rimini to access than others.

22   City of Eugene, one of the Windstream environments,

23   is amongst those that was identified in some of their

24   documents as an easier environment to access, and it seems to

25   be -- my guess would be that it is used for that reason.

1   Q   And when you say "easier to access," what does that mean?

2   A   Well, different environments, particularly when you're

3   accessing remotely, may have different hurdles that you have

4   to circumvent in order to access the environment.

5   So, for instance, for some you might need to call

6   into the environment via a VPN, or there may be a hard or soft

7   token required, so -- you're familiar with the two factor

8   authentication that maybe your bank uses. Sometimes you have

9   to use two-factor authentication with some of the client

10   environments.

11   And I saw some evidence that some of them even

12   require a hard token, which is a physical device that you have

13   to be able to provide to -- in addition to logging into the

14   system to allow you to access the system.

15   So there are just various levels of difficulty.

16   MR. SMITH: Okay. At this time, you Honor, I

17   would move to admit Exhibit 1341, which is an exhibit from the

18   Rimini II case, which was considered by Ms. Frederiksen-Cross

19   in that case, and then referred to again in her report in this

20   case.

21   MR. VANDEVELDE: Your Honor, we would object.

22   That is included in the tab -- Appendix A to her supplemental

23   report that your Honor struck.

24   THE COURT: All right. Mr. Smith, your

25   response?

1   MR. SMITH: I did not realize that it was one of

2   the ones that your Honor had struck. It is something that she

3   has considered and did incorporate by reference into her

4   report in this action -- or in this proceeding.

5   THE COURT: And tell me what the exhibit is,

6   again, please.

7   MR. SMITH: It's Exhibit 1341, and it's an

8   e-mail, a Rimini e-mail, that talks about ease of access to

9   certain environments.

10   MR. VANDEVELDE: Your Honor, I believe -- hold

11   on one second. I believe it is not cited in her report. It

12   is on the list of exhibits that your Honor struck.

13   We haven't heard her opine or give any analysis

14   of this file before, it's another violation of Rule 26.

15   MR. SMITH: It is actually cited in her report,

16   in this -- in the Rimini II report, paragraph 172, footnote

17   103.

18   THE COURT: I'd like to see it. Do you have it?

19   THE CLERK: I can do that.

20   THE COURT: Madam Clerk, do you have it

21   convenient for me somewhere?

22   THE CLERK: So I can mute her -- everybody's

23   monitor --

24   MR. SMITH: May I approach, your Honor? I can

25   just --

1   THE COURT: You may. You may.

2   I am going to admit it and allow it to be

3 testified about.

4   You know, it fell within the order striking the

5 late disclosed documents, but at the same time the Court was

6 not dealing with specific exhibits, and this particular

7 exhibit has obviously been before the parties.

8   It's a Rimini document and was subject to the

9 evidence considered by the Court relative to various parts of

10 the Rimini II case to which there have been the issuance of

11 summary judgment.

12   I find no prejudice to Rimini as a result of

13 this, and it's -- for all of those reasons, I consider it to

14 be relevant and admissible.

15   MR. SMITH: Thank you, your Honor.

16   (Plaintiff's Document Exhibit 1341
                      received in evidence.)
17   MR. SMITH: Thank you, your Honor.

18 BY MR. SMITH:

19   Q   Ms. Frederiksen-Cross, can you tell us what Exhibit 1341

20 is.

21   A   Yes. This is an e-mail, an internal Rimini e-mail, with

22 the subject Client Remote Ease of Access Integration With VM

23 Navigator, and it discusses apparently a document that was

24 attached that has indications or is building towards

25 indications at how easy some environments or are not to

1   access.

2   Q   And does the document indicate anything about ease of

3   access to Windstream environments like the environment

4   associated with the City of Eugene?

5   A   Yes. And if you look at the enumerated lists at the

6   bottom of the first page of this exhibit, you see that it

7   indicates in bullet 7 that they're going to use a sun and

8   clouds in the document to indicate very easy Windstream

9   environments, and then it also has other categories for other

10   types of environments.

11   MR. SMITH: And you can take that down now.

12   BY MR. SMITH:

13   Q   So referring -- turning to your demonstratives on slide

14   26, what is the next component of your third opinion?

15   A   That Rimini cross-uses environments of one customer for

16   development, testing, and troubleshooting for the benefit of

17   other customers, which I understand to be contrary to

18   paragraphs 4 and 6 of the injunction.

19   Q   And do you have a specific component that you're prepared

20   to discuss on this one?

21   A   Yes. This is a violation -- or a practice related to

22   Matheson Trucking where they provided that same file we were

23   talking about earlier to Matheson Trucking, the rsi940a.sqr.

24   Q   And do you understand that the Court has already found

25   the use of the environment associated with the City of Eugene

1   for the benefit of Matheson Trucking, to be a violation?

2   A   That is my understanding, yes.

3   Q   What, then, is your opinion with respect to this?

4   A   Well, this is -- the example for Matheson Trucking in

5   that -- for the two systems we just discussed are very

6   similar. I mean, it's the same set of facts, it's the two

7   other customers we just discussed before the break.

8   Q   Was the use of the City of Eugene's -- or the environment

9   associated with the City of Eugene with respect to Spherion

10   and Smead before or after the use of the environment

11   associated with the City of Eugene for the benefit of Matheson

12   Trucking?

13   A   Before, I believe.

14   Q   Is there any substantive difference, in your mind,

15   between what we've identified as the violation involving

16   Matheson Trucking and the violation involving Spherion and

17   Smead?

18   A   No, it appears to be the same behavior, the provision of

19   that particular update to these three clients without having

20   developed it or tested it in their environments.

21   Q   If you could take a look at Exhibit 22 which I believe

22   has been pre-admitted. What is Exhibit 22?

23   A   This is an e-mail related to the Matheson Trucking

24   provision, this particular update.

25   Q   If you look at the last page of Exhibit 22, do you see

1   the e-mail from Mr. Pringle, asking Susan Tahtaras, "Please

2   deliver HCM200049 to client Matheson Trucking today"?

3   A   I see that, yes.

4   Q   And there's an indication, also, that Jim Benge has

5   already delivered it to clients Spherion and to Smead?

6   A   That is correct.

7   Q   Does that refresh your recollection as to the order of

8   events here, in that the Spherion and Smead delivery occurred

9   prior to delivery to Matheson Trucking?

10   A   Yeah, it was a few days earlier.

11   Q   Is there any evidence in this Exhibit 22 that Rimini

12   performed testing of this update in Matheson Trucking's

13   environment?

14   A   Let me just take a quick look at this.

15   It indicates on the bottom of the first page,

16   "I am not sure if it's been tested in MAT,

17   and if it has been, who the tester was. But the

18   objects are the same for all clients."

19   And then it says, you know, the two GIF files

20   and the SQR.

21   And then they proceed to the informal delivery

22   to MAT, so presumably it has not yet been tested there

23   because, if it hadn't been delivered, it would have been

24   difficult to test it there.

25   Q   And so with reference to the e-mail at the top on the

1   first page of this Exhibit 22, there's an indication from

2   Mr. Benge that he proceeded with "informal delivery to MAT."

3   Do you have an understanding as to what informal

4   delivery means?

5   A   Yeah, that appears to occur when a client has requested

6   some specific fix and it's not in cycle for it -- like it

7   isn't delivered as a part of the normal fix cycle but it is

8   delivered in advance of a normal fix.

9   Q   Okay. Returning to your demonstratives, what is the next

10   component of your opinion regarding cross-use?

11   A   That Rimini used the City of Eugene's PeopleSoft

12   environment to fix a bug regarding the printing of a W2 form

13   for Johnson Controls.

14   Q   And I'd like to direct your attention to Exhibit 27 which

15   has been pre-admitted, and is this an e-mail that you rely

16   upon in support of your opinion?

17   A   Yes.

18   Q   If you look on the second to the last page of this

19   exhibit which I believe is Bates stamped 2009, there's an

20   e-mail at the bottom of the page with the subject line "W2

21   printing."

22   A   "W2 processing" you mean?

23   Q   Processing, W2 processing.

24   A   I see that.

25   Q   And then under that there's a description which reads,

1   "Our payroll team is having issues generating W2 print file."

2   And do you have an understanding how -- well, what's

3   a W2 print file?

4   A   That would be the printouts for the W2s, so the files

5   that a company might print in order to provide W2s to its

6   employees.

7   Q   And do you have an understanding that this e-mail was

8   generated from the SalesForce system?

9   A   It appears to be, yes. It says from -- from Sales --

10   noreply@salesforce.com.

11   Q   But the e-mail comes from individuals at JCI.com; is that

12   right?

13   MR. VANDEVELDE: Objection, foundation.

14   THE COURT: Sustained. Rephrase, please.

15   MR. SMITH: Yes.

16   BY MR. SMITH:

17   Q   Do you see the -- what appears to be the e-mail near the

18   bottom of the page, does it indicate the team members with

19   whom -- from -- the team members requesting this work with

20   Rimini?

21   A   Yes, it appears to be three individuals at JCI.com.

22   Q   And do you understand that to be Johnson Controls?

23   A   I do, yes.

24   Q   On the page Bates stamped 2008, there is an e-mail from

25   Paula Smith in the middle of the page stating, "I have asked

1   Kat if we can provide them the shrunken font template."

2   Do you have an understanding as to what a shrunken

3   font template is?

4   A   My understanding would be that that would be a template

5   where the font size had been reduced.

6   Q   And based upon your evidence of the evidence, did Rimini

7   ultimately give Johnson Controls a shrunken font template?

8   A   That's my understanding, that they tried that as a

9   solution to this problem.

10   Q   Is the provision of a shrunken font template what you

11   allege to be a violation of the injunction?

12   A   No, it is not.

13   Q   If you look at the page Bates stamped ending 1998 --

14   A   Yes.

15   Q   -- do you see the report at the bottom of this page

16   regarding Johnson Controls' use of the template?

17   A   Yes. They're still having problems with the printing on

18   the template.

19   Q   And do you also see the question from Mr. Ramachandran of

20   Rimini asking, "Will reducing the pic size on the print

21   parameters on the XMLP have any effect?"

22   A   I see that, Yes.

23   Q   What's your understanding of that phrase, print

24   parameters of XMLP?

25   A   That would be one of those configuration parameters for

1   the environment that basically it indicates a font size

2   parameter that would be used within the PeopleSoft environment

3   for this particular form.

4   Q   And do you --

5   A   And actually, let me correct that. It's not -- the pic

6   size is not the font size. Forgive me for that. It's -- the

7   pic is the designator for how you define a particular element.

8   So I think what they're actually saying here is how

9   many -- how many numeric positions are allowed for that

10   particular file to -- or for that particular field so that the

11   print will now fit within the field, so they're trimming a

12   position it looks like.

13   Q   Okay. After an intervening e-mail there's another e-mail

14   from Mr. Ramachandran in the middle of the page ending 997,

15   indicating that, "the print parameters for box 17 are blank."

16   What does that mean?

17   A   That for that particular field of that particular form,

18   the print parameters haven't been defined yet so they're

19   defaulting to some preset default value.

20   Q   And what's a print parameter?

21   A   Again, that's the number of fields the print is expected

22   to -- or that particular field is expected to accommodate.

23   So, for instance, for a numeric field, it might be

24   the number of digits that would be placed in that particular

25   box as a maximum size, and that will affect the positioning

—281—

1   within the box.

2   Q   Is a print parameter something that you enter into

3   PeopleSoft software?

4   A   Yeah.   You use the PeopleTools environment to enter it

5   through one of the graphical user interfaces.

6   Q   If you look on the page Bates label ending 1995, do you

7   see the e-mail at the bottom half of the page from

8   Mr. Sheffield, asking if the print format field is also blank?

9   A   I see that, yes.

10   Q   What is the picture below Mr. Sheffield's e-mail message?

11   A   That appears to be a portion of the display from the user

12   interface that shows the setting of this in some environment.

13   Obviously it's not this environment because he's -- this one

14   has a print format in it.

15   But he's asking -- he's providing a picture of a

16   print environment, and saying, you know, is this print format

17   blank in the environment that's having a problem.

18   Q   So is this a picture of the user interface from

19   PeopleSoft?

20   A   Yes.

21   Q   And is it your understanding that Mr. Sheffield is

22   providing this picture of the PeopleSoft software in operation

23   to Mr. Ramachandran?

24   A   Yes, in the context of this question and asking if the

25   print format there is blank, where Mr. Ramachandran is trying

1   to diagnose the problem at Johnson Controls.

2   Q   And is the inclusion of this PeopleSoft user interface in

3   this e-mail of importance to you and your opinions?

4   A   It is to the extent that it shows that a reference to

5   some other environment and how this particular field was set

6   up there is being used as a reference point in diagnosing this

7   particular problem for the client.

8   Q   Okay. And did the inclusion of the PeopleSoft user

9   interface in this e-mail require the reproduction of

10   PeopleSoft software?

11   A   Well, the software would have been run in order to

12   capture this image.

13   Q   Is it your opinion that this picture that we see before

14   us right now beneath the e-mail of Don Sheffield on

15   January 24th, 2019, came from Johnson Controls, the client

16   Rimini was attempting to help in this case?

17   A   No, I don't think so.

18   Q   What happened after Mr. Sheffield provided this image of

19   the PeopleSoft interface?

20   A   Well, if you see at the very top of the page we were just

21   on at 1995, he says, "I'm going to have them put in the print

22   format and see if that makes a difference." And so they were

23   using this information to try to diagnose the problem.

24   And on the previous page ending 994, Don sends to

25   Jai "I think it will work, I tested it here locally at City of

1   Eugene," COEX.

2   Q   Okay. So is it your understanding that Mr. Sheffield

3   tested this print parameter in the City of Eugene's

4   environment for the benefit of Johnson Controls?

5   A   That would appear to be the case, you know, for the

6   benefit of confirming that this fixes the problem.

7   Q   In your opinion is Mr. Sheffield's testing of this fix in

8   the environment associated with the City of Eugene consistent

9   with the injunction?

10   A   In my understanding it is not, because it would be

11   troubleshooting using City of Eugene's environment on behalf

12   of Johnson Controls.

13   Q   For purposes of your opinion, does is it matter that this

14   fix did not involve any change to any Oracle code?

15   A   No, it's still involving a change to the PeopleSoft

16   environment, and it's still using the PeopleSoft available

17   tools to interrogate the cause of the problem, or to try to

18   find a cause of the problem.

19   And then ultimately when they plugged this in on the

20   Johnson Controls, it would have been using the PeopleSoft

21   environment to fix it.

22   Q   Are you aware of any evidence, or is there any evidence

23   in this e-mail indicating that the City of Eugene was

24   experiencing the same printing problem being reported by

25   Johnson Controls?

1   A   I did not see anything in this e-mail that indicated

2   that, no.

3   Q   Why isn't Mr. Sheffield's sharing of this fix simply the

4   use of know-how?

5   A   Well, it's a very specific reference to a specific

6   setting in a specific customer's environment.

7   You know, his know-how may have been what should we

8   make the format, but, this is -- or, you know, the question is

9   looking at the format would have been maybe his know-how and

10   expertise as, gee, we should check the print format.

11   But now in going beyond that, he is providing very

12   specific information about what's happening in some other

13   environment to address the problem in a different customer's

14   environment, and that seems to me to transcend general

15   know-how, and move into the specific creation of the solution

16   that was identified and tested in a different environment.

17   Q   Is it your understanding that the information that was

18   provided by Mr. Sheffield to Mr. Ramachandran is the print

19   format B999999.99?

20   A   That's correct. It is specifically in its association

21   with box 17 where they were having the problem and

22   identifying, also, the print column here.

23   Q   Okay. Let's go back to your demonstrative, slide 29. Do

24   you have a final component to you opinion number 3 regarding

25   cross-use?

1   A   Yes, that Rimini's cross-use -- or cross-uses

2   environments of one customer for development, testing, and

3   troubleshooting for the benefit of another customer is

4   contrary to paragraphs 4 and 6 of the injunction as I

5   understand them.

6   And then this example is specifically directed to

7   the one code for all fix for rsiqtrtx, which was a part of

8   HCM200105, for Oregon quarterly tax reporting, and it supplied

9   to Rockefeller Group and Home Shopping Network.

10   Q   Okay. And is the rsiqtrtx.sql the file and the update

11   that was a part of HCM200105?

12   A   Yes, sorry.

13   Q   What do you mean in your opinion with the phrase one code

14   for all?

15   A   That was a phrase that was actually used in some of the

16   Rimini materials I had seen in Rimini II, and the concept was

17   to try to converge where customers could use a single program

18   instead of a customized version for their installation to try

19   to develop this sort of one size fits all file that could be

20   used across multiple customers.

21   Q   To your understanding is there any benefit to Rimini by

22   creating one code for all files?

23   MR. VANDEVELDE: Objection, foundation.

24   THE COURT: Overruled. She's entitled to her

25   opinion on that subject.

1   MR. SMITH: Okay.

2   THE WITNESS: My opinion, as a software

3   developer, you know, with my background, is that there would

4   be because it means you have fewer individual files to

5   maintain and fewer individual files to test.

6   If you can have one file that fits all

7   customers, or fits many customers, it reduces your burden of

8   maintenance. So when you have a new update to do for those

9   particular customers that the one size fits all fits, you only

10   have to do it once instead of doing it in multiple, different

11   environments.

12   BY MR. SMITH:

13   Q   Okay. If you could take a look at Exhibit 52, which I

14   understand has been pre-admitted. What is Exhibit 52?

15   A   This is talking about a -- it's an e-mail, it's an

16   internal Rimini e-mail from Sara Lu copying herself and Don

17   Sheffield that discusses an SQR file that's a one-size -- or

18   one for all file.

19   Q   If you look at the message from Don Sheffield at 2:51

20   p.m., there's a reference, "but it is a brand-new SQR that is

21   a one version for all clients." Is that what you're referring

22   to?

23   A   Yes.

24   Q   And is there an earlier reference to the 200105 update?

25   A   Yes, there's an earlier reference in this text exchange

1   that's replicated in the e-mail saying that -- where Don

2   Sheffield reports that he finished the Dev development for

3   200105 and 200143.

4   Q   Okay. Are you aware of any evidence indicating that

5   Rimini developed the RSI SQR file independently for

6   Rockefeller Group?

7   A   Yes, because it was provided to Rockefeller as a

8   distribution as opposed to having been developed in instance.

9   I mean, it was already existing at the time it was provided to

10   them.

11   Q   So just for clarification, you're not aware of any

12   evidence indicating that it was independently developed for

13   Rockefeller Group?

14   A   That is correct, yes.

15   Q   Are you aware of any evidence that Rimini developed the

16   RSI SQR file independently for Home Shopping Network?

17   A   Again, I've seen no evidence that it was developed

18   independently because it was already existing at the time it

19   was shipped to them.

20   Q   Did you consider the RSI SQR -- sorry, rsiqtrtx.sqr file

21   that is part of this 200105 update?

22   A   I did, yes.

23   Q   Did Rimini use PeopleSoft software to test this update?

24   A   They did.

25   Q   In your opinion, are one code for all files derivative

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1   works?

2   MR. VANDEVELDE: Objection, your Honor.

3   There is no opinion about the content of this

4   file. Again, just like your Honor's prior ruling excluding

5   her opinion as to the contents of that previous file, there's

6   never been any analysis regarding the content of rsi quarter

7   tax.

8   There's no opinions about any code that it's

9   allegedly incorporated. There's no opinions in her reports,

10   in her depositions, in her declaration.

11   And, again, it's a Rule 26 violation that's

12   self-executing and should be excluded, and that would be

13   consistent with your Honor's prior ruling this morning when

14   she was asked for her opinion on a different file regarding

15   whether it was a derivative work, and your Honor excluded

16   that.

17   THE COURT: Mr. Smith?

18   MR. SMITH: Your Honor, I would stand by the

19   prior statement that she has stated that all -- or many of

20   the -- many, if not all, of the Rimini-created updates are

21   derivative works given their reliance upon PeopleSoft source

22   code for use and the incorporation of PeopleSoft software,

23   among other things, into those updates.

24   MR. VANDEVELDE: Again, your Honor, unlike the

25   previous file where there was at least a code comparison,

1   there has never been any specific discussion about the

2   contents of this file.   There are millions of files at issue

3   in this case.

4   As to this particular issue, which is issue

5   number 10 that your Honor set for this hearing, there has

6   never been a disclosure about any opinion regarding the

7   contents of this file or whether it's a derivative work.

8   MR. SMITH: And Mr. Houmand just saved me again.

9   Paragraph number -- I'm sorry, footnote 153 of

10   her opening report discusses this file, and discusses how this

11   file uses #include statements which are a bases for which she

12   would proffer the opinion that it is a derivative work.

13   MR. VANDEVELDE: Your Honor, there has never

14   been the opinion that the use of a #include statement causes

15   a -- by itself causes a file to be a derivative work.   That

16   has never been a disclosed opinion.

17   This is yet -- I think there has been a series

18   of issues where we are hearing for the first time opinions

19   that have never been disclosed in the course of two years

20   discovery, including extensive expert briefing.

21   We have challenged her opinions on these very

22   bases, and she has refused to supplement them despite trying

23   to serve supplement reports that your Honor struck.

24   This is not an opinion that she's disclosed

25   before, and, again, striking it -- or, sorry -- not letting

1   her testify to it would be consistent with your Honor's ruling

2   as to the very same issue earlier this morning.

3   I would also just note that that file, rsi

4   quarter tax, was not cited in their motion for order to show

5   cause, and it's also not part of the issues that your Honor

6   set for this hearing and the fact that it's a derivative work.

7   THE COURT: My problem with this is that it's

8   been before the parties for so long --

9   MR. VANDEVELDE: Your Honor, if I could just --

10   THE COURT: -- that I don't see -- I don't see

11   prejudice to Rimini as a result of this explanation, the

12   testimony.

13   I think it's a mitigating factor in the overall

14   issues concerning contempt, but, at the same time, I don't

15   find that there's prejudice to Rimini as a result of this

16   because it's something that has been disclosed, it's been

17   before the parties all along.

18   I realize that there are -- the total documents

19   and programs that all of this concerns are overwhelming to

20   virtually everyone, but I'm not finding the prejudice from

21   this one that would cause me to rule that it is a violation of

22   the discovery rule that would bar its testimony.

23   So I'm going to allow it. But I thank you.

24   MR. SMITH: Thank you, your Honor.

25   THE COURT: And I appreciate the Rimini

1   position.

2   BY MR. SMITH:

3   Q   I think my question to you, Ms. Frederiksen-Cross, was,

4   in your opinion, are one code for all files derivative works?

5   A   Those one code for alls that depend on the PeopleSoft or

6   JDE environment for their operation and serve as extensions or

7   modifications to those environments I understand to be

8   derivative works.

9   Q   And is it your understanding that the rsiqtrtx.sqr file

10   is a derivative work?

11   A   Yes.

12   MR. SMITH: I would now like to seek the

13   admission of Exhibit 127 which I believe there are still

14   objections to by Rimini.

15   MR. VANDEVELDE: Yes, your Honor. Exhibit 127

16   relates to clients that -- Rimini clients that are not at

17   issue in this proceeding. It's not one of the ten issues your

18   Honor set for this hearing.

19   It was actually cited in Ms. Frederiksen-Cross's

20   declaration in support of Oracle's motion for an order to show

21   cause roughly a year ago.

22   Your Honor considered that and your Honor

23   rejected it. It denied the motion for order to show cause as

24   to that issue despite the fact that Ms. Frederiksen-Cross had

25   cited this exhibit in her report or declaration in support of

1   that.

2   So, this is an issue that your Honor has

3   considered and specifically excluded from this hearing

4   regarding clients that are not one of the ten things your

5   Honor set for this hearing, and not just that your Honor

6   didn't consider it, but your Honor affirmatively did consider

7   it and excluded it.

8   THE COURT: Can you give me a citation of that?

9   I would certainly take a look at it.

10   MR. VANDEVELDE: Sure. It was cited in her

11   declaration in support of the motion to show cause at

12   paragraph 56.

13   And in your Honor's order on page 19 when it set

14   this issue for hearing, for this week's hearing, it only set

15   it as to Rockefeller and Home Shopping Network, not the

16   additional clients that are reflected in the exhibit they're

17   attempting to now introduce.

18   THE COURT: Mr. Smith, do you have a response to

19   that?

20   MR. SMITH: Yes, your Honor.

21   This testing record concerns the update that is

22   at issue. In response to Mr. Vandevelde's concerns, we are

23   not attempting to introduce this document to show that test

24   plans by and of themselves are cross-use, nor are we

25   attempting to introduce this document to demonstrate anything

1   about any other customer other than Rockefeller Center --

2   Rockefeller Group and Home Shopping Network.

3   MR. VANDEVELDE: I would just renew the

4   objection then based on relevance. If it doesn't pertain to

5   Rockefeller and Home Shopping Network which your Honor

6   specifically did set for this hearing, then, of course, she

7   can testify as to testing as to those two clients.

8   They are now trying to introduce new clients

9   that your Honor specifically considered last year. It was put

10   before your Honor last year in her declaration. It was

11   briefed to your Honor, and your Honor specifically excluded

12   them.

13   THE COURT: Candidly, I need to refresh on that.

14   Let's move to the subject next subject. I'll

15   give you a ruling at end of the lunch hour.

16   MR. SMITH: May I give you one more citation,

17   your Honor?

18   THE COURT: Yes.

19   MR. SMITH: This is discussed in your order to

20   show cause order, ECF 1459, at page 27, lines 5 through 7.

21   THE COURT: All right.

22   Okay. I'll give you a ruling on that when we

23   reconvene following the lunch hour.

24   MR. SMITH: Thank you, your Honor.

25

1   BY MR. SMITH:

2   Q   What are transfer file records?

3   A   They are log records that are created by Rimini's

4   transfer file process. So they identify information such as

5   when a particular transfer is happening, what content   is

6   being transferred, to whom it's transferred, and provide

7   additional indications with respect to, for instance, the

8   status of the transfer.

9   Q   And did you analyze Rimini's transfer file records?

10   A   Yes, I did.

11   Q   Did you analyze them for purposes of determining the

12   distribution of the rsiqtrtx.sqr file?

13   A   I did, yes.

14   Q   And did you filter those records so that it only

15   displayed instances where the rsiqtrtx.sqr file was provided

16   to Rockefeller Group and/or Home Shopping Network?

17   A   As a part of my analysis I did that just to winnow down

18   the amount of visual material to process.

19   MR. SMITH: And with your Honor's permission, I

20   would like to display a demonstrative showing the results of

21   Ms. Frederiksen-Cross's filtering.

22   THE COURT: All right. You may.

23   BY MR. SMITH:

24   Q   What does this demonstrative, entitled Rimini's transfer

25   of rsiqtrtx.sqr to Home Shopping Network and Rockefeller Group

1   International demonstrate.

2   A   It shows the date upon which those transfers occurred in

3   the first column, the name of the file -- this is also

4   filtered just specifically to this file and these clients.

5   So in the second -- or in the third column it shows

6   which client, Rockefeller, RKF, or Home Shopping, HSP, and

7   then the rest of the information is derived from the transfer

8   record as well.

9   So the name of the FTP, the file transfer folder

10   that was being used in the transfer, where it was being

11   transferred from, where it was being transferred to, the job

12   number that performed the transfer, the DevTrack ID associated

13   with the particular transfer, and the status, whether or not

14   that transfer was successful.

15   Q   Given the time period in which this update was developed,

16   are these transfer records consistent with independent

17   development of the rsiqtrtx.sqr file in the environments of

18   Rockefeller Group or Home Shopping Network?

19   A   No. If we looked at other portions of this transfer

20   record, we would see it had been transferred to other

21   individuals prior to that, and Home Shopping Network and

22   Rockefeller appear to have joined Rimini's support later in

23   time, and so received this same update later in time.

24   Q   Are you aware of the Rimini contention that it tested the

25   HCM200105 update in the environments of both Rockefeller Group

1   and Home Shopping Network?

2   A   I am aware that they have made that assertion, yes.

3   Q   And have you reviewed evidence cited by Rimini in this

4   regard?

5   A   I have.

6   Q   I'd like you to take a look at Exhibit 49, which has been

7   pre-admitted. Can you tell us what this document is,

8   Exhibit 49.

9   A   It was a document that Rimini cited in support of its

10   contention that this particular fix had been tested for Home

11   Shopping Network and Rockefeller Group which you see is the

12   last two lines of this document.

13   It doesn't give the specific dates of those tests,

14   and although it indicates a status and a status to, status of

15   completed, it doesn't identify what those statuses actually

16   represent with respect where in the testing or whether this is

17   even testing.

18   Q   In your opinion, does this document confirm that testing

19   of the HCM200105 update was performed in both the environments

20   of Home Shopping Network and Rockefeller Group International?

21   A   I don't have enough information about this specific

22   document. For instance, it doesn't provide the dates or other

23   information that I would want to know about whether that

24   testing was before or after the fix was supplied.

25   And I would observe that it doesn't provide a lot of

1 information about what it is or what it represents, so I -- I

2 can't assess its appropriateness to that fact.

3 Q   Assuming Rimini did test the HCM200105 update in both the

4 environments of Rockefeller Group International and Home

5 Shopping Network, would that change your opinion regarding

6 cross-use with respect to this update?

7 A   No, because they were still being provided an update that

8 already existed in advance that test. Any testing done after

9 that, unless it was followed by subsequent development, would

10 not be in any way indicative that the development occurred in

11 those environments.

12 Q   Okay. I would now like to turn to your next opinion,

13 which is opinion number four, and your demonstrative slide 32.

14   Can you tell us what your fourth opinion is.

15 A   We are moving on to the J.D. Edwards environment, and my

16 summary opinion is that J.D. Edwards copied source code in the

17 course of its maintenance of JDE, and my understanding is that

18 that copying is prohibited by the injunction, and then I cite

19 two specific examples here.

20 Q   And what are the two specific examples or components of

21 this opinion?

22 A   That Rimini regularly copies J.D. Edwards source code

23 while developing and testing updates to J.D. Edwards software,

24 and, again, that I understand that to be a violation of

25 paragraph 8 of the injunction.

1   And, that Rimini copies portions of J.D. Edwards

2   source code specifically from an Oracle source code file, a

3   patch file name P06767 and R89078652, into its technical

4   specification so that there are portions of Rimini's source

5   code that are present in those -- I'm sorry, portions of

6   Oracle's source code that are present in those Rimini

7   technical specifications.

8   Q   Okay. Let's start with the copying of J.D. Edwards

9   source code.

10   MR. SMITH: I would like to remind the Court of

11   the order to show cause ruling on this issue which is slide

12   34, and the fact that the parties appear to debate what the

13   meaning of source code is.

14   BY MR. SMITH:

15   Q   Do you have an understanding of Rimini support practices

16   for J.D. Edwards software, generally, Ms. Frederiksen-Cross?

17   A   Yes.

18   Q   And can you please provide us with a general description

19   of their support practices?

20   A   Yes. In the provision of support to J.D. Edwards

21   clients, Rimini makes updates which may involve things like

22   configuration or data updates, for instance if a tax rate

23   changes, it would just be a data change.

24   Some of their changes, for instance if a new field

25   was added to a form that was required for tax filings, it

1   might include the need to change source code.

2   So two kinds of updates, those that involve source

3   code, those that do not.

4   And in the instance where their changes involved

5   source code, making those changes would necessarily require

6   the creation of a copy of the code as it was viewed to

7   understand where the change need be made and as it was

8   subsequently modified to effect the change, and then saving

9   that back into the J.D. Edwards environment.

10   Q   Does Rimini support different J.D. Edwards products?

11   A   There are -- I think you're asking about the J.D. Edwards

12   environments, the J.D. Edwards World and the J.D. Edwards

13   Enterprise, so, yes, if I'm understanding your question

14   correctly.

15   Q   Yes. What's the distinction, if any, between J.D.

16   World -- J.D. Edwards World and Enterprise?

17   A   There are several. The J.D. World is the older version

18   of the J.D. Edwards product. Its source code is written in

19   RPG, and it's a somewhat less complex environment with respect

20   to how code is maintained and managed.

21   J.D. Enterprise is -- much of the code is written in

22   the C language. It uses and relies on the J.D. Edwards tool

23   OMW, which is Object Management Workbench, framing access to

24   the code.

25   So the way in which source code or other objects are

300

1   accessed is slightly different between the two.

2   Q   Is that to say that if you wanted to access the source

3   code for J.D. Edwards Enterprise, one, you would need to use

4   Object Management Workbench, but that's not true for JDE

5   World?

6   A   That's correct, yes.

7   Q   Based upon your 45 years or more of experience in the

8   software industry, do you have an understanding of the meaning

9   of the term source code?

10   A   I do.

11   Q   Do you have an understanding of the meaning of the term

12   object code?

13   A   I do.

14   Q   Can you provide us your definition or understanding of

15   the term source code?

16   A   Sure. Source code is the program instructions written by

17   a programmer in a particular programming language. There are

18   many of them. But, they are the directions to the computer

19   written by a human in a human-readable form.

20   For virtually all languages, and certainly all the

21   languages at issue here, those then have to be translated into

22   a machine-readable form that would be object code, or

23   sometimes called binary code or executable code, that is the

24   essentially the ones and zeroes that a computer would

25   understand in order to execute that logic on its hardware.

1   Q   Do you have a graphic demonstrating the distinction

2   between source code and object code?

3   A   Yes.

4   MR. SMITH: And with the Court's permission, I

5   would like to display slide 35.

6   THE COURT: Go ahead.

7   BY MR. SMITH:

8   Q   What does this graphic depict, Ms. Frederiksen-Cross?

9   A   This shows generally the process that is required to

10   transform the human-readable source code into the machine

11   executable object code.

12   So the source code, along with any of its includes

13   or copy code, depending on the language involved, goes through

14   a pre-compiler step that merges those -- that content so

15   whatever file you're compiling and all of its constituent

16   inclusions, that expanded code then is then processed by the

17   compiler and turned into -- the compiler is a special-purpose

18   program that serves to translate the human-readable form of

19   the code into the machine-readable form of the code.

20   So the compiler then would translate that input and

21   produce the object code that might itself go through one or

22   two transformations but ultimately ends up as the

23   machine-readable version that's actually run on a computer.

24   Q   The computers can only read object code; is that right?

25   A   For any of the languages at issue in this case, yes.

1   Q   Are you aware that Rimini is attempting to draw a

2   distinction between what it calls open code and closed code?

3   A   I am aware of that distinction that they have claimed,

4   yes.

5   Q   And what is your understanding of Rimini's contention

6   regarding open code and closed code for purposes of the

7   injunction?

8   A   My understanding of their position is that all of the

9   J.D. Edwards source code that is shipped to a client is what

10 they characterize as open code, and that the source code that

11 presumably exists for any of the infrastructure components

12 that are never provided -- that are provided only in object

13 code form to a client is what they are characterizing as the

14 closed code.

15   So it's code that a client never receives but that

16 presumably exists to have provided the basis for those

17 infrastructure components.

18   Q   Okay. And do you have an opinion about Rimini's open

19 code and closed code distinction?

20   A   It seems to me to be an artificial distinction that was

21 crafted specifically in the context of the dispute between

22 these parties.

23   And on its face it seems to be somewhat nonsensical

24 because it would render the Court's injunction against copying

25 J.D. Edwards code to be something that -- you're enjoined

1   from copying something you don't have, if one were to

2   understand their distinction between open and closed code to

3   mean the code that you get and that you're free to change, and

4   the code that no one gets that you're enjoined from changing.

5   Q   In your 45 years of experience, have you ever heard of a

6   distinction between open code and closed code?

7   A   Not as it's used here, no.

8   Q   Had you ever seen Rimini make this distinction in any of

9   its internal documents prior to the time the injunction was

10   issued?

11   A   I have not.

12   MR. SMITH: I would like permission to display a

13   portion of paragraph 72 of Mr. Lanchak's expert report with

14   your Honor's permission.

15   THE COURT: You may.

16   BY MR. SMITH:

17   Q   And, Ms. Cross, are you aware that Mr. Lanchak is an

18   expert for Rimini?

19   A   I'm aware of that, yes.

20   Q   In paragraph 72 of his reports Mr. Lanchak defines open

21   code within JDE as,

22   "Code that is provided by the licensor in

23   readily accessible and usable format, particularly in

24   a development environment including code provided for

25   access, use, modification, and/or customization via

1   development tools included within the JDE licensed

2   software such as the Object Management Workbench,"

3   and so forth.

4   And then he defines close code as, "Not

5   being readily accessible source code representing the

6   core architecture of the software."

7   Is what Mr. Lanchak is describing here as closed

8   code made available to J.D. E. Edwards -- J.D. Edwards

9   licensees?

10   A   The object code that underlies what he seems to be

11   calling closed code is, but no source code that corresponds to

12   that object code is made available to Oracle licensees.

13   Q   So no closed source code is made available to J.D.

14   Edwards licensees; is that right?

15   A   That is correct.

16   The parts of the system like the Object Manager

17   Workbench, and some of the other tools themselves in the

18   infrastructure, are provided as object code only. So there is

19   no source code provided to licensees for those.

20   The code that is provided to licensees is the

21   application code associated with J.D. Edwards, for instance,

22   tax preparation functions and other accounting functions it

23   performs.

24   Q   If closed source code is not made available to J.D.

25   Edwards licensees, how would Rimini ever be able to access

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1   what it has called closed code?

2   A   The only two ways that one would get at that code would

3   be to either breach Oracle's computer systems in order to

4   obtain code directly from Oracle, since it doesn't distribute

5   it under license, or to form an act such as reverse

6   engineering, and decompiling that code to create something

7   that would be an approximation of the code, in that it would

8   be a human-readable form of the object code, though it would

9   not be the original code itself.

10   Some content is lost in that translation. It's like

11   you can turn a steak into hamburger but you can't turn a

12   hamburger back into steak.

13   Q   And with that analogy, the steak at the beginning would

14   be the source code that is within Oracle, for example, J.D.

15   Edwards Object Management Workbench. The hamburger would be

16   the object code that is delivered to customers.

17   A   Right.

18   Q   And then if you reverse compiled it, you would have to

19   get -- you would get hamburger back, but it wouldn't be -- it

20   wouldn't be good.

21   A   Yeah. It might be slightly prettier hamburger, but it

22   wouldn't be -- it would be nothing like the original steak in

23   that analogy.

24   And the reason is that the process of creating

25   object code strips out much of the syntactic and semantic

1   information from the original code and actually reduces the

2   human-readable form of the code to a series of

3   machine-readable instructions.

4   There's not a one-to-one correspondence between the

5   human-readable instructions and the machine-readable

6   instructions typically.

7   So what you get back is a much messier form of the

8   code, and it's missing a lot of those human-friendly elements,

9   like the names. You know, we looked at variable names

10   earlier, those would largely be erased in the reverse

11   engineering process as would any function names that

12   identified specific procedures.

13   So what you would see is a very raw representation

14   of the logic of the code but absent much of the human-friendly

15   element that makes source code easier for a computer

16   programmer to read.

17   Q   In your experience is it difficult in terms of time or

18   effort to decompile object code and turn it back into source

19   code?

20   A   The initial step -- depending on the -- what you're

21   trying to turn it into -- of translating it into a version of

22   source code, is -- can be accomplished pretty readily. But

23   understanding what that source code is and getting it into a

24   format you could work with, for instance, if you had to modify

25   it, is a much more painstaking, time consuming, and expensive

1   process.

2   It's, in my -- I've been asked to do this kind of

3   reverse engineering for clients before in very specific

4   circumstances, and, you know, unless you need to know what was

5   in that code really badly, it's much more cost effective to

6   just write the code from scratch.

7   Q   Have you ever seen any evidence of Rimini attempting to

8   access what it is now calling closed code?

9   A   Other than running the actual environments, but in terms

10   of getting the source code out of that closed code, no, I have

11   not seen any evidence that they attempted to reverse engineer

12   it or decompile it.

13   Q   Does Rimini use what it is now calling close code to

14   provide updates or J.D. Edwards software?

15   A   No, those are components that would not be provided in

16   the course of normal operation of the J.D. Edwards software

17   because they deal with the tool themselves and the

18   infrastructure, not with the performance of the application to

19   deliver tax updates or other regulatory updates.

20   Q   Would accessing what Rimini is now calling close code be

21   of any use to Rimini in connectin with its support practices?

22   A   Again, I cannot see a situation where that would be true

23   because that code is not made available to any customer for

24   the tools and the infrastructure. So you would never have a

25   need in the course of normal maintenance of the J.D. Edwards

1   applications to ever access that code.

2   Q   Can we take a look at --

3   A   That's source specifically as source code.

4   Q   So taking a look at the paragraph 8 of the permanent

5   injunction, in your opinion, does Rimini ever copy what it is

6   calling closed source code, to carry out development and

7   testing of software updates?

8   A   Not the source code associated we those components that

9   are object code only, no.

10   Q   Earlier, you indicated that you defined source code as

11   code that is in human-readable format; is that right?

12   A   Yes. I should have added, probably, that you understand

13   the computer language it's written in, but that's correct,

14   yes.

15   Q   And do any documents or learned treatises support your

16   definition of source code?

17   A   Yeah, that definition is widely used in the industry.

18   Q   Do any of the sources with which you are familiar draw a

19   distinction between open and closed source code?

20   A   I've not seen that distinction written in that -- with

21   respect to source code for -- in its distinction for object

22   code only modules, ever, in my entire career.

23   Q   Have you reviewed Professor Astrachan's book *Computer*

24   *Science Tapestry; Exploring Computer Science with C++*?

25   A   I have looked at portions of it, Yes.

1 Q   Does Professor Astrachan make any distinction in the book

2 between open code and closed code?

3 A   No, none that I could find.

4 Q   I'd like you to take a look at Exhibit 92 which I'll

5 submit is only a demonstrative. Do you have Exhibit 92 before

6 you?

7 A   Yes, I do.

8 Q   And do you recognize this as a portion of Professor

9 Astrachan's report -- rebuttal expert report?

10 A   Yes, from his March 13th, 2020 report.

11 Q   And if you turn to paragraph 309, do you have an

12 understanding of what Professor Astrachan is saying in the

13 first sentence of this paragraph?

14 A   Yes. He says,

15   "Source code generally means human-readable

16   code that can be compiled into object code."

17   So, he appears to be using this term much the

18 same as I define it.

19 Q   Okay. If you could please take a look at Exhibit 60,

20 which is, again, just a demonstrative for present purposes.

21   What is this document?

22 A   This is from the Merriam-Webster online site, and

23 provides the Merriam-Webster Dictionary's definition of source

24 code.

25 Q   And how does the Merriam-Webster Dictionary define source

1 code?

2 A   "A computer program in its original

3   programming language, such as FORTRAN or C, before

4   translation into object code, usually by a

5   computer."

6 Q   Is that by a computer or compiler?

7 A   Oh, compiler. I'm sorry.

8 Q   Now, we're going to move on to binder four.

9 A   Are we done with this one?

10 Q   We're done with binder three.

11 A   Put it on the shelf?

12 Q   Yes, please.

13   MR. SMITH: Well, actually, your Honor, it might

14 be a good time to take a lunch break if you'd like to take a

15 lunch break now.

16   THE COURT: All right. Well, It's five minutes

17 to 12:00, and probably a good time before we go into a new

18 series of exhibits.

19   So, we will reconvene -- does 1:15 work for

20 counsel?

21   MR. VANDEVELDE: It does, your Honor.

22   THE COURT: All right. Let's do that.

23   Court will be adjourned until 1:15.

24   Thank you very much.

25   (The noon recess was taken.)

1   RENO, NEVADA, TUESDAY, SEPTEMBER 21, 2021, 1:20 P.M.

2   ---o0o---

3

4   THE COURT: Have a seat, please.

5   The record will show that we are reconvened

6   following our lunch break.

7   As indicated in this morning's session, the

8   Court deferred ruling on the objection to -- it was either the

9   questioning or the exhibit, Oracle Exhibit 127.

10   Mr. Vandevelde, would you briefly restate your

11   objection, and I'll have a response from Mr. Smith, and we'll

12   take it from there.

13   MR. VANDEVELDE: Sure, your Honor.

14   Issue 10 pertains to an update provided to Smead

15   and Spherion. That's what your Honor's order to show cause

16   said, That's ECF 1459.

17   Leading up to that order Oracle had presented

18   your Honor with the very same evidence it's trying to

19   introduce now regarding different clients, and your Honor

20   obviously considered the record before you and did not set

21   those additional client's -- I think it's Santa Clara Valley

22   Water is one of them -- for this hearing.

23   So it is outside the scope of your Honor's order

24   to show cause based on its consideration of that evidence

25   previously in the specific setting of this order to show

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1   cause, this hearing, for issue 10, as it relates to

2   Rockefeller and Home Shopping Network.

3   THE COURT: All right.

4   And, Mr. Smith, a response on behalf of Oracle.

5   MR. SMITH: Yes, your Honor.

6   We are seeking to introduce this evidence with

7   respect to Rockefeller Group and Home Shopping Network which

8   are the subjects of violation 10.

9   We are not seeking to introduce this exhibit for

10   any other purpose. We're showing through this exhibit the

11   testing that was conducted and the timing of the testing that

12   was conducted if the testing was conducted for those two

13   clients.

14   THE COURT: All right. I have reviewed it, and

15   it was important to me to review my previous order in this

16   matter, document number 1459, and I have done that.

17   I am of the view that limited to the purposes of

18   the evidence as it relates to Rockefeller and Home Shopping

19   Network, it's my view that this evidence is admissible and I

20   will allow you to proceed with that, Mr. Smith.

21   MR. SMITH: Thank you, your Honor.

22   THE COURT: And for the record I should state I

23   reviewed my previous order with regard to this. I also

24   reviewed Exhibit Number 127 and reconsidered the issue as I

25   understood it, but I wanted to have it restated for the

1   benefit of the record before ruling.

2   So with that, let's go ahead. The objection is

3   overruled.

4   BY MR. SMITH:

5   Q   Ms. Frederiksen-Cross, do you have Exhibit 127 before

6   you?

7   A   I am looking for it, counsel. Is that in binder three, I

8   think --

9   Q   Binder three approximately five tabs from the back.

10   A   Yes.

11   Q   Okay. Can you tell us what Exhibit 127 is.

12   A   It's related to the testing of that same update that was

13   applied to Spherion and -- to Spherion and Smead.

14   Q   Do you mean Rockefeller and Home Shopping Network?

15   A   I'm sorry. Yes, I do, I'm sorry. Yes.

16   Q   And so where does this record derive from?

17   A   This is a Spira record from the system that's used to

18   track the testing -- or the use of testing cases for various

19   updates.

20   Q   And if you look at -- well, is this document called a

21   test case? It says that at the top. Is that what you refer

22   to this document as?

23   A   Yes, test case 8484.

24   Q   Okay. And then if you look at the bottom of the first

25   page, it talks about test steps.

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1   A   I see that, yes.

2   Q   What are test steps?

3   A   That's just to identify some of the steps that will be

4   performed during this particular test case.

5   Q   And does this document indicate when this -- when it was

6   created?

7   A   Yeah. If you go back to the top part you originally had

8   highlighted, this was created October 7th, 2018, and last

9   updated October 25th, 2018.

10   Q   Okay.

11   And does the creation date of October 7th, 2018,

12 indicate to you that there was a test, at least one test done

13 on or about that date?

14   A   That would be the date that the test case was created

15 more likely.

16   Q   Okay. And is there a test case displayed or described in

17 this document?

18   A   Yes, there is.

19   Q   What is the test case?

20   A   It's used to verify that the objects are correct in AP

21 designer, that's one of the Oracle tools, and to register the

22 component and perform online page validation.

23   So, again, to display the online content of this

24 particular -- or related to this particular fix so that you

25 can see that everything was displaying properly, and that

1   the -- I'm sorry, and perform the validation.

2   So it would be to perform -- make sure that the

3   validation tests were being performed properly.

4   Q   And are there depictions of the validation test in this

5   document?

6   A   Step two appears to include a screenshot related to the

7   validation testing, yes.

8   Q   And does the next page, page 2, also include a screenshot

9   that relates to the testing?

10   A   Yes, it does.

11   Q   And what -- is this a user interface from PeopleSoft?

12   A   It is with respect to this particular component, yes.

13   Q   Okay. And does this indicate that the test was conducted

14   by the Santa Clara -- or for the Santa Clara Valley Water

15   District?

16   A   This particular screenshot was captured from a test that

17   was conducted there, yes -- or from running of the software

18   there.

19   Q   And do you know when Rockefeller Group and Home Shopping

20   Network became Rimini customers? Was it before or after this

21   test case document was created?

22   A   It was after the date of the creation of this test case

23   document.

24   Q   Does the back half of the document, which I think begins

25   on page ending 331, describe testing that was done in

1   different client environments?

2   A   Yes. It looks like that at the bottom of 331 it starts

3   to a display that looks like it's probably a scrollable

4   display, the various test sets containing the test.

5   Q   Okay. And would conducting these tests in the

6   environments of those clients involve running the -- those

7   PeopleSoft software in those client environments?

8   A   In those various environments, yes.

9   Q   Do you know whether or not either Rockefeller Group or

10   Home Shopping Network are shown as having testing conducted in

11   this Exhibit 127?

12   A   My recollection is that one of them is. I believe it was

13   Rockefeller. Let me double-check that.

14   Q   And if you could direct your attention to the bottom of

15   page 5 of 9, do you see in the second column HCM200105_rke?

16   A   Yes, that's what I was looking for, thank you.

17   Q   And do you understand that to be indicative of a test run

18   in the environment of Rockefeller Group?

19   A   Yes, in September 19th of 2019.

20   Q   All right. Would you expect to see a Spira record like

21   this if a test was performed in a particular environment?

22   A   I would expect to based on how I understand this record

23   to be used, yes.

24   Q   All right, thank you, we're done with that exhibit, and

25   we will go on to more source code.

317

1   Can you take a look at what has been marked as

2   Exhibit 139 in binder number four.

3   A   Yes, I have that here.

4   Q   And what is Exhibit 139?

5   A   It's the *Compendium of U.S. Copyright Office Practices,*

6   *Third Edition*.

7   Q   And have you made use of the *Compendium of U.S. Copyright*

8   *Practices* during your career?

9   A   I have, portions of it.

10   Q   Do you consider it to be a reliable authority regarding

11   the definition of source code?

12   A   With respect to how source code is viewed by the

13   copyright office, yes.

14   MR. SMITH: And, your Honor, I would like to

15   have permission Ms. Frederiksen-Cross read into the record the

16   definition of source code and object code from this exhibit

17   which should be allowed under 803(18)(b) of the Federal Rules

18   of Evidence because this is a document which describes the

19   work -- or the office's activities. This would be the U.S.

20   Copyright Office.

21   THE COURT: Any objection?

22   MR. VANDEVELDE: No objection, your Honor.

23   THE COURT: All right. You may do so.

24   BY MR. SMITH:

25   Q   And so if you could turn to page 413, and Section 721.3,

1   can you read into the record the U.S. Copyright Office's

2   definition of source code.

3   A   Do you want me to read the entire paragraph?

4   Q   Yes, please. You can exclude the legal citations.

5   A   Okay. Paragraph 721.3,

6   "What is Source Code? Source code is a set

7   of statements and instructions written by a human

8   being using a particular programming language, such

9   as C, C++, FORTRAN, COBOL, PERL, Java, Basic, PASCAL,

10   LISP, LOGO, or other programming languages. These

11   statements or instructions are comprehensible to a

12   person who is familiar with the relevant programming

13   language, but in most cases a computer or other

14   electronic device cannot execute these statements or

15   instructions unless they have been converted into

16   object code. This conversion is performed by a

17   separate program within the computer, which is known

18   as interpreter, assembler, or compiler."

19   Q   And is that definition of source code consistent with

20   your definition of source code?

21   A   Yes.

22   Q   Could you read the definition of object code, which

23   follows that, into the record.

24   A   Yes. 721.4,

25   "What is Object Code? Object code is the

1   representation of a computer program in a machine

2   language. It typically consists of the numbers zero

3   and one (i.e., binary coding), the numbers zero

4   through seven (i.e., octal coding), or a combination

5   of letters and numbers (i.e., ASCII or hexadecimal

6   coding). Object code is comprehensible to a computer

7   or other electronic device, but it is not intended to

8   be read by human beings, and as a general rule, is

9   not directly comprehensible to human beings."

10   Q   And is that definition supplied by the U.S. Copyright

11   Office consistent with your definition of object code?

12   A   Generally speaking, yes. The one difference I would make

13   is that sometimes programmers were required to look at the

14   binary during debugging so there are techniques that render at

15   least part of that comprehensible.

16   Q   Okay. So with respect to JDE software, are there

17   different types of source code distributed with J.D. Edwards

18   software?

19   A   With respect to the programming languages specifically,

20   for instance you have dot C files and dot H files in the

21   enterprise -- EnterpriseOne system, J.D. World would have RPG

22   files. So in that sense there are different types of code, or

23   different types of source code.

24   Q   Are there various different types of source code that are

25   distributed with the JDE software readable by humans?

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1   A   Yes, if they know that language.

2   Q   With respect -- well, let me ask you this. Do Rimini's

3   post-injunction support practices involve the copying of J.D.

4   Edwards software source code?

5   A   Yes, they do, necessarily; in some cases, not in all

6   cases.

7   Q   With respect to J.D. Edwards EnterpriseOne, do you have a

8   set of demonstratives demonstrating how Rimini Street uses

9   J.D. Edwards software source code to carry out development and

10   testing of updates?

11   A   Yes, I do.

12   MR. SMITH: And with your permission, your

13   Honor, I'd like to show those slides which are demonstrative

14   slides 37 through 40.

15   THE COURT: You may.

16   BY MR. SMITH:

17   Q   And, Ms. Frederiksen-Cross, maybe you can just walk us

18   through these demonstratives.

19   A   Sure. This is a demonstrative related to the J.D.

20   Edwards EnterpriseOne environment, and the source code will be

21   stored on a server and accessed via the Object Management

22   Workbench. So when a programmer wants to work on a particular

23   program, they will check out that library number that contains

24   the source code file.

25   Q   And does the checking out of that source code file

321

1   involve the copying of the source code?

2   A   Yes.   It creates a copy for use by the programmer as they

3   are working on the file.

4   Q   And then what does the next slide show?

5   A   Here you see the copy being worked on by a programmer, or

6   a representation of that, so the programmer is viewing the

7   code, working on the code, displaying it so that they can make

8   modifications to the contents of that code.

9   And that environment that the programmer works in is

10   also provided by the Object Management Workbench.

11   Q   And so is this the display of the code file in the Object

12   Management Workbench that we're seeing here?

13   A   A graphic representation of that, yes.

14   Q   Okay.   And so does the display source code in the Object

15   Management Workbench create a copy of the J.D. Edwards source

16   code?

17   A   Well, necessarily, to be displayed, there is the copy

18   that's been checked out, and then during the operation when

19   the programmer is working with that code, there will be copies

20   of at least portion of the code in the display memory of their

21   work station.

22   Q   Okay.   And tell us does the next slide show?

23   A   Once the programmer has completed their change -- and

24   often they will have tested it at this point, at least a

25   preliminary test, but then they check it back into the Object

1   Management Workbench environment as an updated version of the

2   program.

3   Q   And how does the check-in process you just described

4   involve copying J.D. Edwards software source code?

5   A   Well, again, the copy that the programmer has working

6   with and has modified on their work station will now be put

7   back into the Object Management Workbench, the appropriate

8   library number, as a fresh copy of that code.

9   Q   And then what does the next slide show?

10   A   This is talking about another function that one does with

11   source code during the course of development and deployment.

12   Typically the software is worked on in a development

13   environment where one or more programmers may be working on

14   one or more modifications to one or more different files.

15   Once a particular set of modifications is ready for

16   testing, for a more thorough testing, like a quality assurance

17   test, those are typically promoted to a testing environment,

18   that is a, for lack of a better term, a stable testing

19   environment that's set up with the appropriate data and other

20   things required to perform the testing of that particular

21   software change.

22   And then once the quality of the change has been

23   verified through testing, it will be copied again into the

24   production environment where it will run in the normal course

25   of business.

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 1   Q    Okay.  So can you summarize for us when and where copies

 2   of J.D. Edwards software source code are made in connection

 3   with development and testing?

 4   A    Sure.  We discussed in the previous slide the copies that

 5   are made when code is checked out of a development environment

 6   to be worked on, as it's being worked on, when it's being

 7   checked back in.

 8          And then, once it's ready for testing, another copy

 9   will be made to promote it, is the term that's used, to the

10   test environment, and assuming the tests are all passed, and

11   the software is -- the changes are verified as good and is

12   fixing whatever the problem was or adding whatever the feature

13   was, they then will be copied again into the production

14   environment.

15          And, in some instances, there may be additional

16   environments.  Sometimes there's a fourth environment called a

17   staging environment that comes between testing and production.

18   Q    So assuming Rimini is doing development work on J.D.

19   Edwards software source code, there would be copies made in

20   connection with the checking out of the source code, the work

21   on the source code, the checking in of the source code, and

22   then any promotion of that source code file?

23   A    That is correct, yes.

24   Q    Does this same process apply to work on J.D. Edwards

25   World?
```

1   A   It's very similar. It's typically -- J.D. World doesn't

2   have the same OMW, Object Management Workbench environment,

3   but conceptually the same steps are performed.

4   There will be a repository where the code is held.

5   The code will be checked out to be worked on, checked back in

6   when it's ready for testing, and then typically promoted to a

7   series one or more test environments and ultimately promoted

8   to production.

9   Q   And are the same copies of J.D. Edwards software source

10 code made in connection with that process?

11   A   Yes.

12   Q   Are there any Rimini documents from the post-injunction

13 discovery period that support your opinion that Rimini copies

14 J.D. Edwards software source code to carry out development and

15 testing of software updates?

16   A   I'm sorry, can you say that again, counsel?

17   Q   Sure. Are there any Rimini documents from the

18 post-injunction period that support your opinion that Rimini

19 copies J.D. Edwards software source code to carry out

20 development and testing of software updates?

21   A   Yes, I did see some.

22   MR. SMITH: Could you please take a look at

23 Exhibit 58. I don't believe there's any objection to this

24 one, but I'm not positive.

25   THE WITNESS: And that would be in binder five.

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1   MR. SMITH: Okay. You're right.

2   THE WITNESS: I think.

3   MR. VANDEVELDE: We haven't received that binder

4   yet.

5   THE WITNESS: And I think you said 58, counsel?

6   MR. SMITH: Yes, that's correct.

7   MR. VANDEVELDE: No objection, your Honor.

8   THE COURT: Thank you.

9   BY MR. SMITH:

10   Q   What is Exhibit 58, Ms. Frederiksen-Cross?

11   A   Exhibit 58 is a Rimini document titled JDE HR

12   Payroll Tax and Regulatory Release for the United States

13   RS18JDE-US-P11 For Instance Toledo, Ohio, Installation

14   Instructions.

15   Q   What does the RS18JDE-US-P11 mean?

16   A   RS18 indicates a Rimini update for the year 2018. The

17   P11 would indicate that this is the eleventh update in that

18   year, the eleventh official update in that year.

19   Q   Okay. If you turn to page 4, there are some instructions

20   to the customer, I believe, to "copy object(s) source code

21   from indicated source library to your target environment(s)."

22   Do you see that in the box in 1, or under number 1?

23   Sorry. The box under Promote the Objects, but it

24   says number 1.

25   A   Yeah, thank you. Under step 3, yes.

1   Q   Yes. And so what does that language, "Copy object(s)

2   source code from indicated source library to your target

3   environment(s)," mean?

4   A   It's instructing the user that as a part of the promotion

5   of objects from one environment, or from the distribution to

6   the environment, they are to copy those source code objects

7   from whatever library is indicated in the instructions into

8   the JDE SRC RSI test location.

9   Q   And do you understand these to be instructions that

10   Rimini provides to its clients?

11   A   That is my understanding, yes.

12   Q   And is Rimini's use of the term source code in this

13   document consistent with its open code or closed code

14   distinction?

15   A   I wouldn't think so just because, again, the only source

16   code available is the source code.

17   Q   Does the phrase "copy object(s) source code from

18   indicated source library" indicate that Rimini copied JDE

19   source code to create or test this update?

20   A   It indicates in this case that they provided source code

21   for the update, yes, or would if it was one of the objects

22   included.

23   Q   Okay. Now, are you aware that Rimini is claiming in this

24   proceeding that reading paragraph 8 of the injunction to apply

25   to what it calls open code would destroy Rimini's ability to

1   provide JDE support?

2   MR. VANDEVELDE: Objection, foundation.

3   THE WITNESS: I have heard -- oh, sorry.

4   THE COURT: Establish greater foundation,

5   please.

6   BY MR. SMITH:

7   Q   Are you aware through your work in these proceedings, as

8   well as your participation in this hearing, that Rimini is

9   claiming that reading paragraph 8 of the injunction to apply

10 to open code would destroy Rimini's ability to provide JDE

11 support?

12   A   Yes, I am aware of that.

13   MR. VANDEVELDE: Objection.

14 BY MR. SMITH:

15   Q   And do you have any --

16   MR. VANDEVELDE: Objection.

17 BY MR. SMITH:

18   Q   Do you have any response to that contention?

19   MR. VANDEVELDE: Objection, foundation.

20   THE COURT: Overruled.

21   THE WITNESS: Yeah. That assertion seems to

22 presume several things. One, that the only way that the code

23 could be copied would be by Rimini, that is to say that a

24 customer couldn't copy it, perhaps under their direction and

25 make the changes under their direction.

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1   It also ignores the fact that many different

2   types of JDE support activities, for instance, updating tax

3   rates and other things, don't involve the actual copying of

4   source code, but, rather, they are related to changes to data

5   and configuration parameters.

6   BY MR. SMITH:

7   Q   And in connection with your review of the materials in

8   this case and Rimini II, did you come across instances where

9   Rimini support practices for J.D. Edwards only involved data

10   changes or configuration changes?

11   A   Yes, those were some of the things that I saw principally

12   in the Rimini II case but some here as well.

13   Q   And do you have a percentage or an estimate as to the

14   amount of work that Rimini does to support JDE that involves

15   source code versus compilation changes versus data changes?

16   A   Only as derived from some of Rimini's e-mails that

17   communicated counts of overall changes and how many related to

18   source code of that particular count.

19   If that is representative of their practice as a

20   whole, it's roughly two percent require source code.

21   Q   Okay. Are you aware of Rimini's contention that reading

22   paragraph 8 of the injunction to apply to open code would

23   render paragraph 10 of the injunction superfluous?

24   A   I'm aware from the hearing here and from some of the OSC

25   briefings that they have made that representation.

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 1              MR. SMITH:  With your permission, your Honor,

 2    I'd like the display paragraphs 8 and 10 of the injunction.

 3              THE COURT:  You may.

 4    BY MR. SMITH:

 5    Q    And with reference to paragraphs 8 and 10 of the

 6    injunction, Ms. Frederiksen-Cross, do you have a response to

 7    Rimini's contention that reading paragraph 8 of the injunction

 8    to apply to what it calls open code would render paragraph 10

 9    of the injunction superfluous?

10    A    I do.  To me, I do not read these as -- I do not read 8

11    as superseding 10.

12              Eight seems to be directed specifically to the act

13    of copying source code to carry out development and testing,

14    whereas, as I read 10, it seems to be more related to the use

15    of one J.D. Edwards customer's environment to support,

16    troubleshoot, or perform development for any other licensee.

17              So, on the one hand, 8 seems to be directed to

18    copying, whereas 10 would be directed to what we have been

19    calling cross-use.

20    Q    Okay.  Returning to your demonstratives in slide 43,

21    let's move to second component of your J.D. Edwards source

22    code opinion.  Can you remind us what that is.

23    A    Yes, that Rimini copied portions of J.D. Edwards source

24    code from Oracle source code files in the preparation of its

25    technical specification.
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1   So it included portions of the Oracle source code in

2 its technical specs which I understand to be a violation of

3 paragraph 8 of the injunction.

4 Q   What is a technical specification?

5 A   A technical specification is a record that Rimini creates

6 that can be used to recreate an update.

7   So, it's a set of instructions, if you will, for how

8 to apply a particular update and what needs to be done in a

9 particular update.

10 Q   And these are written instructions; is that right?

11 A   They are, yes.

12 Q   Okay. Do you have an understanding as to why Rimini

13 creates technical specifications?

14 A   To provide guidance to the engineers making updates in

15 various environments, how to effect those updates in that

16 environment.

17 Q   Can you please take a look at Exhibit 80 which I believe

18 has been pre-admitted.

19 A   Yes, I see it here.

20 Q   And do you recognize this document?

21 A   This is an example of a technical design specification

22 for a JDE update. This one happens to be dated

23 September 12th, 2013, and it describes JDE update ID

24 JDE105328.

25 Q   Is that the date it was -- 2013 was the date it was

1   created or the date it was effective?

2   A   This was the date it was effective.

3   This particular update appears to be for U.S.

4   Federal 2018, Social Security EFW2C, which would be the W2

5   corrections form filing.

6   Q   And do you see at the bottom of the screen being

7   displayed from the first page there the document conversion

8   control?

9   A   Yes, I see that.

10   Q   And what does this version control record indicate the

11   last revision was to this document?

12   A   The most recent revision shown here is August 10th, 2018.

13   Q   If you look at the first page, that update ID, what does

14   that update ID refer to?

15   A   That is a particular update set that would be -- that was

16   being worked on with this technical design specification.

17   Q   And does that update ID apply to both EnterpriseOne and

18   J.D. Edwards World?

19   A   It appears that it does, yes.

20   Q   Does Rimini explain in this technical specification which

21   J.D. Edwards files are being updated?

22   A   Yes, it does.

23   Q   And where is that located?

24   A   That would be -- this is -- can you give me the OREX

25   number again so I can flip through the document?

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1   Q   Yes, OREX _80. And if it helps, I can direct your

2   attention to pages 46 and 47.

3   A   I know that there's a list of the objects in here.

4   Thank you, counsel.

5   Yes. There they are. Thank you.

6   Q   Okay. So with respect to this page 46 there's a header

7   called, Summary of Object Changes. What are object changes

8   again?

9   A   Again, the objects are the various programatic components

10   or forms that are a part of this change, and so each one of

11   those is characterized as an object to be changed.

12   Q   And with regard to the Section 2.1.1.1 E1 Object Changes,

13   what does that refer to?

14   A   This shows a list in this case of program files, four

15   program files that will be changed as a part of this change.

16   Two of them are indicated as the print W-2c forms,

17   the normal form, the laser form, and then the other two are

18   the batch programs for the work file billed and work file

19   pre-billed.

20   Q   Okay. And that first object is R89078652. What is that?

21   A   You and I must be on a different page because I see the

22   first object as P06767.

23   Q   Oh, you might be on the next page. I'm on page 46, I

24   believe.

25   A   Okay. Sorry, I was on the wrong page.

1   This is a list of the EnterpriseOne object changes.

2   So the electronic form Filing Build Workfile is

3   R89078652, and that is shown as a batch program of type UBE,

4   batch application, which indicates a batch application.

5   This just distinguishes between a file that runs --

6   a program that runs in the background, if you will, versus one

7   that is interacting with the user directly. So batch

8   application is like a -- you just run the program and it puts

9   out its output.

10 Q   So is this object, R89068652 J.D. Edwards software code?

11 A   Yes.

12 Q   Please take a look at Exhibit 220, which I believe has

13 already been admitted.

14 A   I see that, yes.

15 Q   What is Exhibit 220?

16 A   It is the program listing associated with that W-2c --

17 EF W-2c electronic filing for the build of the workfile.

18 Q   And what does that mean?

19 A   It's the source code for that program, for one of the

20 programs we were just talking about.

21 Q   Okay. So Exhibit 220 is the source code for one of the

22 objects listed in the tech spec?

23 A   Correct.

24 Q   Okay. Go back to Oracle Exhibit 80 and please direct

25 your attention to page 10. What is shown on page 10?

1   Well, actually, let me start at the very beginning?

2   Under 1.3.4.1 there's a reference to R89078652. Is

3   that a reference to the source code file listed as an object

4   change in the source code file that we just looked at?

5   A   Yes.

6   Q   Okay. And then what is represented after that?

7   A   There is a header for code change details which

8   identifies the following output columns and variables that

9   will be added, and then below that another table for the event

10 rules, variables.

11   Do you want me to go on to the next page or just

12 stop there?

13   Q   What's being shown underneath the header Code Change

14 Details? Does that continue after that first table?

15   A   Yes, the first two tables are related to code changes.

16 The first one are changes related to variables, that is to

17 say, the data areas that the program will work with.

18   And the second table is for event rules, and these

19 appear to be various calculation rules.

20   Q   Okay. And then do these code changes and the code change

21 details continue on past this page 10 or 11?

22   A   Well, what follows in the following section is actually

23 the guidance for what changes to be made.

24   Q   Okay. So with regard to page 11, can you describe how

25 this provides guidance as to the changes that should be made?

1   A   Yes.   The way this page is structured, you'll see the

2   section name which identifies the portion of the program where

3   the changes will be made, and then a specific event rule in

4   the case of this first example, which is still the event rule

5   to be changed.

6   There are a few lines of code outside the box, and

7   these are code that are part of the code that comes from the

8   Oracle program that's being used as an identifier of where to

9   place a particular change.

10   And then in the box -- the code within the box is

11   the new code to be added in this case.

12   Q   Okay.   And then scrolling through or blowing this up

13   to a larger page image, does this technical specification

14   contain various lines of code from the Oracle file and then

15   additional boxes indicating additions to be made to it?

16   A   It contains lines of code that are taken as excerpts from

17   the Oracle file, though I will note that a few characters in

18   each line have been replaced by ellipses, that is to say, the

19   dot dot dots you see there are not in the original code, they

20   are replacing a few characters in each line.

21   Q   Okay.

22   A   And then these are being used as guidance for where to

23   insert the new code.

24   Q   So, for example, if I were a programmer, which I'm not, I

25   would look in the Oracle code under -- for the line OC Orig

1   Roth 457B ellipses n(RCO), and then after that line put the

2   Rimini written code in the box at that spot?

3   A   Right. You would look for the occurrence of these two

4   lines, and then where you saw those two lines you would add

5   the code immediately after that.

6   Q   Did you conduct an analysis of the Oracle source code

7   lines, or partial lines, which appear in Rimini's technical

8   specification, Exhibit 80?

9   A   I did, yes.

10   Q   And I'd like you to take a look at Exhibit 212.

11   MR. SMITH: And this is a comparison, your

12   Honor, which I would like to move into evidence with the same

13   caveats that we've had with respect to other comparisons.

14   MR. VANDEVELDE: No objection as a

15   demonstrative.

16   THE COURT: It's admitted as demonstrative.

17   (Plaintiff's Demonstrative Exhibit 212
                            received in evidence.)
18   BY MR. SMITH:

19   Q   Can you tell us, Ms. Frederiksen-Cross, what this

20   document is, Exhibit 212.

21   A   Yes. On the left-hand side, I have taken an excerpt from

22   the tech spec.

23   On the right-hand side, I show the Oracle code from

24   the underlying file from which -- well, where I found these

25   same lines, the file that you were being directed to in the

1   tech spec to modify, so in this case the R89078652 file, or

2   the file that was being modified by R89078652.

3   Q   What is being illustrated with the yellow boxes on this

4   page?

5   A   These are some of the first navigation pieces.

6   So, for instance, you recall that I mentioned that

7   the tech spec identifies the name of the Oracle code section

8   that is to be modified, and then the specific part of that

9   section, in this case the event rule -- I'm sorry, the -- yes,

10   the event rule for table conversion.

11   So it shows where in the Oracle code on the right

12   side you would locate that you're in table conversion where

13   you would locate the event rule portion.

14   Q   What is being illustrated with the red boxes on this

15   first page of 212?

16   A   The red boxes on the right-hand side are the full Oracle

17   line, excluding just the line number from that -- from that,

18   but the content of that line.

19   And then on the left-hand side you see the

20   representation of those lines of code, albeit with the

21   ellipses in place.

22   So, for instance in the first red box you see that

23   there's the words OC space Corr space Roth, R-o-t-h, space

24   457b, and then a space, and the word Plan, open paren, RCO,

25   close paren, space equal space, and then two double quotes.

1   And on the right-hand side, you see that the P-l-a

2   of Plan has been replaced by ellipses in that particular line

3   on the left-hand side.

4   Q   Can you describe what's being shown in the second set of

5   red boxes on this page.

6   A   Again, the second set of red boxes show another instance

7   where a portion of an Oracle line of code has been copied, or

8   actually two lines of code, two contiguous lines of code,

9   with, again, a few of the characters in each line replaced by

10   ellipses.

11   Q   Can we turn to page 3 of this exhibit, and can you

12   describe for us what is being depicted on page 3.

13   A   Yes. Again, within the red boxes you see on the

14   right-hand side the Oracle code and on the left-hand side the

15   representation of that code minus a few characters in each

16   line.

17   Q   In conducting this analysis did you determine whether any

18   source code comments appearing in the Oracle file were copied

19   into Rimini technical specification?

20   A   Yes, there are some source code comments copied in here.

21   Q   And source code comments are important to your analysis

22   why?

23   A   Again, just because they are not a required element of

24   the program, so there would be no reason necessarily to copy

25   them, but, nonetheless, they are present in this file.

1   Q   Can you provide the Court with an example of a comment

2   being copied.

3   A   Sure. So, for instance, if you go to page 7 of this

4   document, you can see "Write RCU Record to Flat File and OW

5   Table," on the right-hand side, it's the first red box on the

6   page.

7   And you can see that that same comment has been

8   copied in the Rimini tech spec at the top of that page. It's

9   the first red box on the left-hand side.

10   Q   I think we may have the wrong page up. Are you referring

11   to 7 of 15?

12   A   I was looking at 7 of 15, yeah. I may have skipped by

13   one that you pulled up, sorry.

14   Q   That's okay.

15   So what was the comment that you indicate as copied?

16   A   Right, you've got it highlighted there.

17   Q   So the comment that appears in the Oracle file is "Write

18   RCU Record to Flat File and OW Table"?

19   A   That is correct.

20   Q   And then the same comment appears in the Rimini file?

21   A   That is correct.

22   Q   Do you have any opinion as to whether the J.D. Edwards

23   source code that Rimini copied into this technical

24   specification constitutes protected expression?

25   MR. VANDEVELDE: Objection, your Honor. There's

1   been no disclosure of any opinions regarding the

2   protectability of the code that's allegedly copied and

3   ellipses'd in the Rimini file in any of her expert reports or

4   declarations.

5   Again, this is another example of an opinion

6   they're doing on the fly for the first time in this live

7   hearing.

8   THE COURT: Madam Clerk, would you repeat the

9   question, please -- Madam Reporter.

10   (The record question was read as

11   follows: Do you have any opinion as to whether the

12   J.D. Edwards source code that Rimini copied into this

13   technical specification constitutes protected

14   expression?)

15   THE COURT: I'll allow the question.

16   THE WITNESS: I believe that it does.

17 BY MR. SMITH:

18   Q   And why do you believe that?

19   A   This is clearly, in the red boxes on the right-hand side,

20 code written by Oracle.

21   I see no constraining factor that would dictate that

22 this code has to be written in this way according to any

23 constraint, either technical or other.

24   And what is replicated on the right-hand side,

25 is a sufficient quantity of this code to be dispositive in

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1 identifying these particular lines within the program.

2 BY MR. SMITH:

3 Q   Could Rimini have used an alternative method to identify

4 where its modifications needed to be placed in the R89078652

5 file?

6 A   Sure. They could have written out, for instance, a

7 narrative explanation of what part of the code to be modified.

8 Q   Do you agree with Professor Astrachan's contention that

9 Rimini's copying of source code into this technical

10 specification was *de minimus*?

11 A   I pondered that question, and, in searching for these

12 lines within the underlying Oracle file, I found that taken

13 together in these groupings of lines, they were dispositive of

14 a particular segment of the Oracle code and provided

15 sufficient information for one to readily recognize that code

16 and distinguish it from other code within the program.

17   So I think the answer is yes, that it, to my mind,

18 is creative expression and is important with respect to the

19 functioning of the Oracle code.

20 Q   Professor Astrachan, I believe, indicates that there's

21 only 11 lines of code that match between the Rimini technical

22 specification and the Oracle code. Do you agree with that?

23 A   I don't. He seems to have ignored the fact that there

24 are segments of the Oracle code that are replicated such that

25 sometimes the lines within different segments match, and

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1   that's why there's the guidance with respect to the segments

2   that are -- occurs at the beginning of each of these segments,

3   but there were more lines than that.

4   Q   Does the method by which the Oracle code was copied into

5   the Rimini technical specification matter to you, whether by

6   cut and pasting or typing it out?

7   A   No.   In my opinion, whoever prepared this specification

8   still copied portions of the Oracle source code into the

9   specification.

10   Q   If you don't mind, can you turn back to Exhibit 80, which

11   is the technical specification, and I'd like to direct your

12   attention to page 47.

13   A   Okay.

14   Q   Does this page describe the object changes to be made for

15   the J.D. World program?

16   A   That's correct, yes.

17   Q   And do you see that in the first object in this table

18   there's the object ID P06767?

19   A   I see that, yes.

20   Q   Do you have an understanding of what the object P06767

21   is?

22   A   Yes.   This is the World object that builds the work --

23   that does the work file build in the J.D. Edwards World

24   version of the software.

25   So it's the program file, the source code for the

1   program file in that environment.

2   Q   Okay. So P06767 is J.D. Edwards source code?

3   A   Yes, for J.D. Edwards World.

4   Q   Now, if you could take a look at Exhibit 219 which has

5   been pre-admitted. Do you recognize Exhibit 219?

6   A   Yes. This is the P06767 work file build program that we

7   just saw referenced in the tech spec.

8   Q   And is this the Oracle copyrighted P06767?

9   A   That is correct, yes.

10   Q   Did you review this document in connection with your work

11   in this case?

12   A   I did, yes.

13   Q   Now, turning back to Oracle Exhibit 80, if you wouldn't

14   mind directing your attention to page 32.

15   A   Okay. I'm there.

16   Q   Do you see the header System Object Specifications World?

17   A   I see that, yes.

18   Q   And beneath that do you see the subheader P06767-Federal

19   EFW2c Work File Build?

20   A   Yes.

21   Q   What does this page of the technical specifications set

22   forth? This page and subsequent pages.

23   A   Again, this is beginning to describe the changes that are

24   to be put into this particular program starting with the first

25   change which is an addition to the revision log to indicate

1   that you're changing it for this 2018 year-end tax update.

2   And then proceeding to -- in a fashion very similar

3   to the one we just looked at, cite Oracle source code as a

4   locator, and then provide in the boxes the code that's to be

5   added after the Oracle lines of code.

6   Q   Okay. So do -- if you direct your attention to

7   pages 36 and 37, do those provide examples of Rimini copying

8   source code from Oracle's P06767 file into this technical

9   specification?

10   A   There's an example here, yes. It's -- in the red code,

11   you see where it says Add Code Lines to Extend The, and then

12   what's in quotes is verified to be code from the Oracle

13   program, so the "If CT3 <> T3" -- there's a dollar in there,

14   but "$CT3 <> $T3 space OR.

15   Q   Okay. So just so this is clear, so this is an

16   instruction to add the Rimini written code beneath the red

17   line before the Oracle code line which reads, quote, "If,

18   dollar sign CT3, less than greater than, dollar sign T3 OR,"

19   close quote; is that right?

20   A   That's correct, in the case of the first instruction.

21   Q   And did you prepare a demonstrative regarding this source

22   code analysis with regard to J.D. Edwards World?

23   A   Yes, I did.

24   MR. SMITH: And your Honor, may we have

25   permission to show this demonstrative?

1   THE COURT: You may.

2   BY MR. SMITH:

3   Q   And can you highlight for us again what you just

4   went over and is shown by this demonstrative,

5   Ms. Frederiksen-Cross?

6   A   Certainly. On the right side, we have from Oracle's

7   P06767 file a conditional block, that is to say, an "if" the

8   test for various conditions and take some action dependent on

9   those.

10   And so you see the first line of that "if" that's

11   highlighted here is, if the variable dollar CT3 is less than

12   or greater than the variable dollar T3 or, and then it goes on

13   to list the other conditions that would also satisfy this

14   "if."

15   Q   And then do you have another page which illustrates

16   another instance of this?

17   A   Yes.

18   MR. SMITH: Can you turn to slide 47.

19   BY MR. SMITH:

20   Q   Okay. And what is depicted on this slide,

21   Ms. Frederiksen-Cross?

22   A   On the right-hand side you have, again, a line of code

23   from Oracle's P06767 file, the content of which is Write space

24   F06767 space -- a couple of spaces, actually -- REC RCU on the

25   right-hand side from the Oracle file.

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1   And then on the left-hand side from Rimini's tech

2   spec you see instructions to add code before or after that

3   line. So, the first block is to be added before this line.

4   The second block of code is to be added after this line.

5   Q   Okay. Now, why -- is it your opinion that the copying of

6   these lines of code such as Write F06767 REC CRU code line, is

7   it your opinion that is copying that is more than *de minimus*?

8   A   Again, I think so because it is quoting the entire line

9   and identifying a specific line of Oracle code in its

10 entirety. And just for the record it's REC RCU.

11 Q   I may have misspoke. My apologies.

12 A   No. It's difficult pronouncing these things. No

13 worries.

14 Q   Now, did Rimini copy any comments from the Oracle P06767

15 file into the technical specifications for the J.D. Edwards

16 World?

17 A   Yes. Again, they copied comments here as well.

18 Q   And if you can turn your attention back to your

19 demonstrative -- or, sorry, back to the technical

20 specification, and look at page 35.

21   Does that provide an example?

22 A   Yes. The comment in question is the comment that says

23 "Calculate Deferred Compensation Contributions." So that is

24 the comment that's in between the quotes there.

25 Q   And what, again, is the significance of copying comments

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1   in your opinion?

2   A   Well, in this case, it's, again, copying a line from the

3   source code of Oracle's file.

4   It happens to be comments which are completely

5   discretionary items that are added by the Oracle programmer at

6   the time the software was developed.

7   Q   Do you -- well, are you aware of means by which Rimini

8   could have achieved the same objective with its technical

9   specification without copying Oracle's J.D. Edwards code?

10   A   Well, again, they could have written out a narrative

11 description, for instance, of where the changes needed to be

12 made in the file. That would be a very standard way to do it,

13 would be to say in the calculations that do blah, blah, blah,

14 add code to effect the following change and then have their

15 code block in there.

16   So there are ways you could have written out a more

17 narrative expression of how to put this code in the file

18 without copying lines from Oracle's code.

19   Q   And does page 35 of Exhibit 80 actually show that?

20   A   Yes. If you could go there, I can show an example of

21 that.

22   So you see in the second section here, they're just

23 writing out the narrative of what the function of the

24 statement is. They're saying add these code lines to the

25 select statement that accumulates the W2 transaction codes

1   from F60732. So here they're writing a more narrative

2   explanation of where to place the change in the code.

3   Q   Is it your opinion that Rimini used the same methods for

4   copying source code in P06767 that it did for copying source

5   code with regard to the R89078652 update?

6   A   Are you talking about a method whereby they performed the

7   copying operation, or just the process of copying the code in?

8   I'm not sure I understand your question exactly.

9   Q   The methods involved.

10   A   Yeah. I can't be certain necessarily whether these were

11   typed or copied verbatim because the RPG language requires

12   certain things to be in certain columns.

13   And so it would be largely indistinguishable whether

14   they had cut and paste, or whether they had just been looking

15   at it and typed it in.

16   You know, it suggests because it's got this spacing

17   where they're naming the functions that it may have been cut

18   and paste, but I can't be certain there.

19   Q   In your opinion, is the technical specification that is

20   marked as Exhibit 80 consistent with Rimini's Acceptable Use

21   Policy?

22   A   I would not understand it to be so having these

23   inclusions of Oracle code in it. I would have thought that

24   that would have been prohibited under my understanding of the

25   Acceptable Use Policy.

1   Q   Okay.   Now, can we return to your demonstratives, and can

2   you describe your fifth opinion, Ms. Frederiksen-Cross.

3   A   Yes.   This relates to that file prvtsidx.plb which I

4   believe is inconsistent with the injunction's prohibitions.

5   Q   And this relates to Oracle database.   What is Oracle

6   database?

7   MR. VANDEVELDE: And, your Honor, I just want to

8   make the objection, at the very minimum for the record, that,

9   again, as to this particular file, Ms. Frederiksen-Cross has

10   not offered any excerpt disclosure whatsoever, or analysis as

11   it relates to database.

12   She -- her only substantive opinion as to this

13   file is that it contains JDE software source code which she

14   has acknowledged is an error.

15   She has offered no opinion as to this particular

16   file and how it relates to database, or made any disclosure in

17   any report anywhere that this file could support a violation

18   of paragraph 15 of the injunction.

19   So, again, it's a violation of Rule 26 which is

20   self-enforcing.   I know this is an informal proceeding.

21   I know we have had the file, yes, but we've

22   never had her opinion.   That's what matters, Not whether we've

23   had the file.   We've had the file for a long time, but we have

24   never had disclosure of her opinion.

25   THE COURT: All right.   Mr. Smith?

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1   MR. SMITH: Yes, your Honor.

2   This file, as we've discussed previously, has

3 been discussed at length in Ms. Frederiksen-Cross's reports,

4 paragraph 192, 193. There was an extensive discussion of the

5 file.

6   There was an apparent mistake or

7 misunderstanding, although I'm not sure -- well, there's an

8 apparent mistake and misunderstanding as to what type of file

9 this is, but this file is still distributed with J.D. Edwards

10 software source code.

11   THE COURT: All right. The Court will overrule

12 the objection on the grounds that have been previously stated,

13 that these have been before the parties all along.

14 BY MR. SMITH:

15   Q   Ms. Frederiksen-Cross, if you could look at Exhibit 228,

16 which I believe has been pre-admitted. Wait one second until

17 we figure that out.

18   MR. VANDEVELDE: We would object to Exhibit 228.

19 It was excluded by your Honor in granting our emergency motion

20 to strike. It is listed in Appendix A of

21 Ms. Frederiksen-Cross's attempted supplemental report.

22   MR. SMITH: Your Honor, these code files were

23 individually listed by Ms. Frederiksen-Cross and considered in

24 Exhibit 46 to her opening report. They were included on the

25 quote/unquote supplemental expert report simply in an

1   abundance of caution.

2   THE COURT: All right. Accepting that

3   representation from Mr. Smith, the objection is overruled.

4   BY MR. SMITH:

5   Q   And so, Ms. Frederiksen-Cross, what is Exhibit Oracle

6   228?

7   A   Would you scroll down to the bottom of that page, please.

8   Okay. Give me the right-hand corner of the page. I

9   just want to make sure we were looking at the same thing.

10   The version in my printed copy for 228 bears a

11   Rimini Bates number, and because these two programs look very

12   similar, I was looking for that Bates number.

13   But at least in my binder, 228 is the copy of the

14   program that was retrieved from Rimini's production.

15   Q   Okay. And do you have an understanding as to where this

16   file was found?

17   A   It was a part of Rimini's system. It was initially

18   produced to us as a part of a production that came from a J.D.

19   Edwards 9.0 install. So it was in the -- amongst the install

20   materials related to J.D. Edwards nine zero.

21   Q   And what is your understanding as to what this

22   prvisdx.plb [sic] file is?

23   A   My understanding is that the parties have now agreed that

24   this is more properly characterized as a database file because

25   it is also distributed as a part of the Oracle database

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1   software.

2   And -- are you asking what the nature of this

3   program is?

4   Q   Yeah, what it does.

5   A   This is what's called a wrapper function, and its purpose

6   is to expose the functions that can be used when one interacts

7   with this program, but because it is a plb, it obscures some

8   of the SQL related by this -- to those functions.

9   So it's a way of creating software that is -- in

10   which you first write the source code and then you process it

11   with a tool that exposes as much of that source code as a

12   person would need to use the code.

13   So you see these static functions, and they give

14   information about what the parameters that function takes, or

15   the name of the function and what parameter it takes.

16   But then if you scroll down, you see some stuff

17   that looks -- if you scroll down far enough, you get to

18   gibberish, and that is the part that is obscured by the

19   wrapping function.

20   So you're exposing what someone would need to have

21   to be able to interact with this software, but you're not

22   revealing its inner details necessarily.

23   Q   Okay. And so I take it that at the time you initially

24   performed your analysis, you understood this to be a J.D.

25   Edwards file, is that -- or source code file; is that right?

353

1   A   Initially as it was produced to us in the production that

2   Strows (phonetic) was hosting, yes.

3   Q   And at the time you performed that initial analysis, did

4   anyone from Rimini disagree with your understanding of that

5   file?

6   A   No. At the time he responded to my report, Dr. Astrachan

7   called it a JDE file as well. I was only aware of this

8   controversy just shortly before this hearing.

9   Q   And when -- so you understand now, I take it, that the

10 parties are characterizing this as a database file?

11 A   I understand that both parties are now characterizing

12 this as a database file, yes.

13 Q   And do you have an understanding as to how this file

14 specifically came to exist on Rimini's systems?

15 A   Yes. It was provided by one of Rimini's customers.

16 Q   I would like to show you Exhibit 1342 which I understand

17 has been pre-admitted. Do you recognize this document?

18 A   Yes. This is a SalesForce ticket, again, one that I

19 prepared through the printing process we discussed earlier of

20 turning the SalesForce stuff into HTML.

21   This particular one is case number 157154, and it

22 relates to the Australian Bureau of Statistics. It was opened

23 on 2018 -- December 4th, 2018.

24 Q   And directing your attention to page 5 of Oracle 1342, do

25 you see a December 4th, 2018 case comment posted by Dae-Hyun

1   Kim?

2   A   I do.

3   Q   And do you understand Dae-Hyun Kim to be employed by

4   Rimini?

5   A   I do, yes.

6   Q   Do you have an understanding as to what Dae-Hyun Kim is

7   saying in this case comment?

8   A   Well, he - it appears to be quoting a part of an e-mail

9   or communication he had with Quang, who I understand to be

10 someone from the Australian Bureau of Statistics, thanking him

11 for the update and providing some information about the

12 problem that is related to this file we've just been

13 discussing, the prvtsidx.plb.

14 Q   And what is your understanding of the request to "grab

15 all SQL statements related to SDO_INDEX_METHOD_10I"?

16 A   I understand him to be directing Mr. Quang there to copy

17 out from this file the SQL statements that might be needed to

18 diagnose this problem.

19 Q   And then directing your attention to the top of page 7,

20 do you see a comment noting that an attachment was uploaded to

21 the case?

22 A   I do see that, Yes.

23 Q   And what file is being attached to the SalesForce case?

24 A   You need to blow up the next box to see that.

25   This was attaching an attachment named prvtsidx.zip.

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1   Q   And then directing -- well, would the uploading of that

2   attachment, that zip file, create a copy of the prvtsidx.plb

3   file on Rimini's systems?

4   A   Yes, if it was in that zip file which we did verify to be

5   the case.

6   Q   So you verified that this zip file contained the plb

7   file?

8   A   Yes.

9   Q   Okay. And then directing your attention to the top of

10   page 8, do you see a comment from Quang Le?

11   A   Yes. He said he's uploaded the file for Dae to check,

12   and also that he's put some logs in the zip file.

13   And he says he uploaded them because he couldn't --

14   or, I'm sorry, that he e-mailed them because he couldn't

15   upload them because they were too large.

16   Q   And then what is your understanding as to how Rimini

17   responded to the Australian Bureau of Statistics?

18   A   Well, he thanked them for the files and then used those

19   files to diagnose the problem.

20   Q   And how did he use those files to diagnose the problem?

21   A   It appears to me, in looking at the exchange here, that

22   he would have gone through the file to understand what was

23   going on in this particular instance and to determine just

24   exactly where in the -- where in the code the problem was, or

25   what the problem was that -- that the Australian Bureau of

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1   Statistics was experiencing.

2   Q   And does this indicate to you that Rimini opened the zip

3   file and then opened the plb file?

4   A   It appears to be the case, yes.

5   Q   And would opening the plb file create a copy of that file

6   on Rimini's systems?

7   A   Yes, in memory at the time it was opened as well as the

8   copy that was created when this was uploaded.

9   Q   As part of your analysis of this dot plb file, did

10   you compare this file against a version that was provided

11   by Oracle?

12   A   Yes, I did.

13   Q   And if I could direct your attention to Exhibit 226, do

14   you recognize this document which has been pre-admitted?

15   A   Yes. This is the Oracle copy that I compared it to.

16   Q   Did you reach any opinions or conclusions with respect to

17   your comparison of these two files?

18   A   Yes. The files were very, very similar. There were a

19   few lines changed, but they were substantially the same

20   program as far as could be discerned in a wrapped program.

21   They had the same methods with the same signatures,

22   so all of that code that was visible in the Oracle plb was

23   also visible in the copy that was placed on Rimini's systems.

24   Q   And is that reflected in Exhibit 174, which I would move

25   to admit based upon the same conditions that it's being used

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1   as a demonstrative?

2   A   That is correct, yes.

3   THE COURT: It will be admitted on the same

4   grounds.

5   (Plaintiff's Demonstrative Exhibit 174
                               received in evidence.)
6   BY MR. SMITH:

7   Q   And what is the conclusion for your basis that these two

8   files are substantially similar?

9   A   Well, if you look at the portions of the files that

10   are -- the source code that's visible in the files which would

11   principally start around line 26 and then scrolling down, you

12   see that the function names that the two files are providing

13   are the same.

14   The parameters, that's the stuff that's inside the

15   parentheses following the function name, are the same.

16   You see where there is code review, but it's the

17   same code throughout, so everything that's in the white, the

18   unhighlighted code.

19   Q   Okay.   Have you seen any evidence that Rimini warned the

20   Australian Bureau of Statistics that it should not upload the

21   prvtsidx.plb file or other files onto SalesForce?

22   A   I have not seen any such evidence.

23   Q   And do you have any opinions as to Rimini's actions in

24   the SalesForce case were consistent with its Acceptable Use

25   Policy?

1   A   Again, it appears that they solicited that the client

2   provide at least parts of this file, the visible SQL

3   statements, to them, and I would understand that to be

4   inconsistent with Rimini's Acceptable Use Policy.

5   And, again, once they had uploaded this file, I see

6   no communication back to the client that, "No, wait, that's

7   not what we wanted, don't do that, please."

8   So, again, that failure to advise the client that

9   they had done something inappropriate, and in the logs that we

10 checked that were the communication logs, with our security

11 team, with the Rimini security team, again, we didn't see any

12 evidence that there had been a report of this.

13   So I didn't see any evidence that they were

14 following the Acceptable Use Policy in this case.

15   Q   Okay. Returning to the demonstrative of your opinions,

16 Ms. Frederiksen-Cross, what is your sixth opinion?

17   A   This is a more general opinion that the limited

18 production that we received in the context of this hearing,

19 because it didn't include more fulsomely the productions of

20 the actual development of some of these updates, or more

21 complete records of where updates that we examined were

22 developed, I think limited our ability to really understand

23 the full scope in the violations of the injunction.

24   I mean, these are examples that we were able to

25 identify from the limited production. But I think had there

1   been a broader production, we would have probably found more

2   examples.

3   Q   Previously you talked about the difference in quality and

4   quantity of the materials produced in this case, and in

5   comparison to Rimini II, I wanted to ask you a couple of

6   follow-up questions in that regard.

7   Were you provided access on a 24-hour-a-day,

8   seven-day-a-week basis to Rimini's SalesForce systems?

9   A   I was not provided any access to Rimini's SalesForce

10   systems. The only access we got was in the form of those

11   database dumps that we discussed earlier, that we had to

12   reconstruct to be able to even review their content.

13   Q   Were you provided access on a 24-hour-a-day,

14   seven-day-a-week basis to Rimini's e-mail system?

15   A   I had no access to Rimini's e-mail system, No ability to

16   run searches there myself.

17   Q   Were you provided access on a 24-hour-a-day,

18   seven-day-a-week basis to Rimini's Instant Messaging system?

19   A   No, I had no access there at all.

20   Q   How about Rimini's share file folder system?

21   A   No.

22   Q   Are you aware of Rimini's contention that it has provided

23   over 12,000 updates since the permanent injunction was issued?

24   A   I am aware of that statement, yes.

25   Q   And were you provided access to 12,000 updates for your

1   review?

2   A   I was not provided 12,000 updates for my review.

3   Q   Now I would like to move to your seventh and final

4   opinion. What is your seventh and final opinion,

5   Ms. Frederiksen-Cross?

6   A   Rimini's recordkeeping, as I commented in my report in

7   Rimini II and mentioned earlier today, is, I would

8   characterize, somewhat spotty at best.

9   Particularly for a company of this size, that

10 services as many clients as it does, their ability to identify

11 what changes are made, who, why, and when, where those changes

12 are developed, what specific machine they're developed on,

13 what they have deployed to their customers both in terms of,

14 you know, what the current deployment is and what the actual

15 running version of the software is, it seems to be woefully

16 inadequate to me based on the records I've seen.

17   Similarly, it appears from the communications from

18 Rimini's clients, I see a lot of communications where there is

19 some confusion about what is actually on the systems, and

20 that's sometimes called change control in the industry, but

21 it's the notification and communication of what changes have

22 been placed on a customer's environment.

23   I don't see very thorough records of that at all,

24 and, based on the communications, suspect that they don't

25 exist because this confusion wouldn't exist otherwise.

1   Then, similarly, with respect to testing status, you

2   know, we have seen some records related to what has been

3   tested, where it was tested, and by whom, and whether a test

4   was successful, but the absence of some test records for some

5   clients makes me believe that either testing is not taking

6   place or we're not getting a full picture of what's going on

7   with respect to the testing.

8   And, finally, the kinds of records that I would

9   expect that distinguish who is working in a particular system,

10   when and why, certainly that information can be captured. I

11   don't see it here.

12   Another category is this file share system that's

13   used. That system has the ability to log -- the Citrix file

14   share system has the ability to log who's accessing what when,

15   and I haven't seen any logs produced from that so I don't know

16   if they have that feature turned off or if it just wasn't

17   produced.

18   But some of that additional information would have

19   helped in understanding what I see and certainly would allow a

20   more complete and comprehensive record of what was going in

21   Rimini's development, testing, and deployment practices.

22   Q   And do you have any particular experience or expertise

23   regarding recordkeeping and documentation regarding software

24   development?

25   A   I do, both from the standpoint of managing software

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1   development teams, and, of course, being a software developer

2   myself. I also have considerable experience reviewing such

3   records in the context of litigation matters.

4   Q   Okay. And do you have an opinion as to whether it would

5   be easier to identify injunction violations if Rimini kept

6   its records -- or if Rimini's recordkeeping practices were

7   more in line with industry standards?

8   A   Certainly that would be helpful I think. You know, the

9   use of things like revision control systems that allow you to

10   make very detailed analysis of a change to the software as to

11   who, what, when, why, the kinds of deployment control records

12   that would be typical to know who got what when and from what

13   source. We know all of those things would have been very

14   helpful to have here.

15   MR. SMITH: Okay. Thank you,

16   Ms. Frederiksen-Cross. I have no further questions.

17   Your Honor, I did apparently fail to move into

18   evidence officially an exhibit yesterday which was Oracle 100,

19   and I don't know if there is any objection --

20   MR. VANDEVELDE: No objection.

21   MR. SMITH: No objection I understand.

22   MR. VANDEVELDE: Do you know what document it

23   was?

24   THE COURT: All right.

25   MR. SMITH: It is the lis file e-mail I think.

1   MR. VANDEVELDE: Yeah, I believe that was

2   admitted, your Honor. No objection.

3   THE COURT: All right. It is admitted.

4   (Plaintiff's Document Exhibit 100
                   received in evidence.)
5   MR. SMITH: Thank you, your Honor. I pass the

6   witness.

7   THE COURT: All right. And it's also a good

8   time for an afternoon break.

9   So, ladies and gentlemen, we'll break until

10   three o'clock, or perhaps a few minutes after depending on

11   when everyone is ready, and we'll be adjourned until that

12   time.

13   (A recess was taken.)

14   THE COURT: Have a seat, please.

15   The record will show we are reconvened following

16   our afternoon break.

17   Mr. Vandevelde, would you like to go forward,

18   please, with cross-examination.

19   MR. VANDEVELDE: Yes, your Honor, thank you.

20   And good afternoon, Ms. Frederiksen-Cross.

21   THE WITNESS: Good afternoon, counsel.

22   CROSS-EXAMINATION

23   BY MR. VANDEVELDE:

24   Q   I'm going to start with issue one which concerns the

25   provision of the injunction regarding local hosting for

1   PeopleSoft. Is that how you understand that provision?

2   A   For your reference, I have a copy of the injunction --

3   Q   And we'll look at that in a second.

4   A   Okay. I just wanted you to know I have up here with me.

5   Q   Terrific.

6   Do you understand that issue one concerns local

7   hosting of alleged PeopleSoft files on Rimini's systems?

8   A   Local hosting on Rimini's systems?

9   Q   You have testified about files found on Rimini's systems,

10   correct?

11   A   Yes. The distinction I was making is hosting to me is

12   running somebody's system there, but the presence of files on

13   Rimini's systems -- with that clarification, I understand you,

14   thank you.

15   MR. VANDEVELDE: Got it.

16   And if I could have tab 1, which is the

17   injunction, paragraph 5, that would be great. If you could

18   zoom in on paragraph 5, please.

19   BY MR. VANDEVELDE:

20   Q   And, Ms. Frederiksen-Cross, the basis for your opinions

21   on alleged presence of files on Rimini's systems is based on

22   paragraph 5 of the injunction, correct?

23   A   Principally, yes, those that were addressed with respect

24   to the materials found on Rimini's systems.

25   Q   Okay. And the provision says,

1   "Rimini Street shall not reproduce, prepare

2   derivative works from, or use PeopleSoft software

3   documentation on, with or to, any computer systems

4   other than a specific licensee's own computer

5   systems."

6   Correct?

7   A   Correct.

8   Q   So it's your understanding that Rimini's computer systems

9   would be systems other than a specific licensee's own computer

10   systems, correct?

11   A   That is correct.

12   Q   Okay. And this provision in particular pertains only to

13   the PeopleSoft product line, correct?

14   A   This specific provision, yes.

15   Q   Okay. Are you aware of any other provision of the

16   injunction that would prohibit Rimini from hosting -- or from

17   having on its systems files related to another product line?

18   A   If you don't mind if I look at the entirety of the

19   injunction.

20   Q   No, you may.

21   A   Well, a similar provision exists in paragraph 9 with

22   respect to J.D. Edwards.

23   MR. VANDEVELDE: John, if you could blow up

24   paragraph 9, please.

25   THE WITNESS: It might be helpful if you would

1   blow them up one atop the other because you'll see the

2   similarity then.

3   BY MR. VANDEVELDE:

4   Q   Is it your contention that paragraph 9 prohibits the

5   presence of a J.D. Edwards software file on Rimini's systems?

6   A   It would be my understanding that it prevents Rimini from

7   having derivative work or using the J.D. Edwards software on

8   its system because it's not a licensee, as I understand it, of

9   J.D. Edwards.

10   Q   So it's your opinion -- do you know whether paragraph 9

11 is still in effect?

12   A   As far as I know, it is. But if it's not, counsel, if

13 you would provide that information --

14   Q   Are you aware that it was struck by the Ninth Circuit?

15   A   I did not recall that, no.

16   Q   Okay. Are you aware of any other provisions in the

17 injunction that places a prohibition on the presence of files

18 on Rimini's systems other than the PeopleSoft product line?

19   A   Again, 10 of the J.D. Edwards section seems to prohibit

20 reproduction.

21   MR. VANDEVELDE: John, if you could replace

22 paragraph 9 with paragraph 10, please.

23 BY MR. VANDEVELDE:

24   Q   It's your --

25   A   Actually, that's with respect to a licensee's computer

1   system so I will retract that answer.

2   Q   Okay, thank you. Anything else?

3   A   Not specifically that I see here.

4   Q   Okay, thank you.

5   You have defined an environment -- actually, strike

6   that. Before I go there, I believe you were going to say you

7   understood the term local hosting as what, what's your

8   definition?

9   A   I understand local hosting to mean, as enjoined here, the

10 hosting of a client's systems on Rimini's systems, but that

11 would be hosting it locally to Rimini's system.

12 Q   And you have defined an environment as a, quote,

13   "Computing machine, real or virtual, in which

14   a specific system is installed and capable of being

15   run. For example, a PeopleSoft environment is a

16   system in which the PeopleSoft suite of applications

17   is installed. After installation, each of a set of

18   PeopleSoft's applications can be run."

19   Is that your definition of environment?

20 A   That is a definition I would use, yes.

21 Q   Okay. And did you use it in this case?

22 A   I believe that I did use that in one of my reports in

23 this case.

24 Q   Okay. Do you recall it being part of your lexicon of

25 your report in Rimini II?

1   A   That's what I was thinking, it was in Rimini II, yes.

2   Q   And you were using that same definition here in this

3   proceeding as well?

4   A   In terms of an environment without any other qualifier,

5   yes.

6   Q   During your work in this contempt proceeding you found no

7   evidence that Rimini had installed on its own computer systems

8   any PeopleSoft environments, correct?

9   A   Any running environments, that is correct, sir.

10   Q   And, in fact, in paragraph 372 of your report in this

11   matter you noted that, quote, "Rimini does not have a

12   PeopleSoft environment," correct?

13   A   Certainly I've seen no evidence of it.

14   Q   You made the affirmative statement, though, in your

15   report that Rimini does not have a PeopleSoft environment?

16   A   Based on the review of the materials that were provided

17   to me, that is correct.

18   Q   You would agree that the files -- well, let me back up.

19   You have provided a number of opinions about files

20   from PeopleSoft found on Rimini's systems, correct?

21   A   Correct.

22   Q   Okay. Even collectively you're not offering an opinion

23   that those files are an environment, correct?

24   A   As in an operating environment, no, that is correct.

25   Q   They're not installed, correct?

1   A   No, they're present on the system, but they are not a

2   running installation of the PeopleSoft software.

3   Q   About how many files make up an environment normally in

4   PeopleSoft?

5   A   There are thousands of PeopleSoft files, and then to have

6   a functioning environment, you know, you need all of the

7   PeopleTools installed, and you would need one of the base

8   operating systems that PeopleSoft software runs on, and you

9   would need a database system installed, so quite a very large

10   number of files.

11   Q   Can you put a order of magnitude on it, tens of

12   thousands, hundreds of thousands?

13   A   I wouldn't want to do that as I sit here without actually

14   checking the facts.

15   Q   Okay. And you mention an operating system. So you need

16   an operating system to run PeopleSoft?

17   A   To run any software pretty much you need an operating

18   system unless it is a single purpose, special purpose

19   computer.

20   Q   Okay. So PeopleSoft cannot run without an operating

21   system to your knowledge, right?

22   A   I'm not aware of any stand-alone. I think you asked me

23   that during my deposition. I'm not aware of any stand-alone

24   instance.

25   Q   And PeopleSoft cannot run without a database, correct?

1   A   That is correct.

2   Q   Do you know what types of database it needs to run with,

3   or it can run with?

4   A   It can run with Oracle, and I believe there are several

5   others that it runs with. As I sit here, I don't remember the

6   specific names of those. It's in my report, but I don't

7   recall as I sit here.

8   Q   You walked through a number of SalesForce cases

9   yesterday. Do you remember that?

10   A   Yes.

11   Q   Okay. And, by the way, SalesForce is a cloud-based

12   service, right?

13   A   I believe that it is cloud-based. I'm not sure whether

14   there is an option for a client to also install it on their

15   own server.

16   Q   So you know there is a cloud-based option, correct?

17   A   I know that there is a cloud-based option, yes.

18   Q   And you don't know whether there's a --

19   A   Locally hosted.

20   Q   -- locally-hosted version. Have you ever seen a

21   locally-hosted version of SalesForce?

22   A   I don't recall.

23   Q   You went through a number of summaries of those

24   SalesForce cases, do you remember that, yesterday?

25   A   Yes.

1   Q   Okay. And those related to the files that were found on

2   Rimini's systems?

3   A   To samples of those files, yes.

4   Q   And to generate those summaries you relied on, I think

5   you said, exported tables from SalesForce?

6   A   That's correct. We were provided with the export of the

7   underlying SalesForce tables and attachments.

8   So we had basically the whole SalesForce system

9   minus the normal SalesForce interface, and there were a few

10   extras like the cross-references between the attachments and

11   the Bates number references.

12   Q   Understood. And those exports came in a csv, or comma

13   separated value format?

14   A   My recollection is it was comma separated. It may have

15   been tabbed, but my recollection is it was a .csv type.

16   Q   Okay. And you converted those into spreadsheets?

17   A   No, we put one in a spreadsheet for display to use in my

18   demonstrative, but we actually converted them loading them

19   into a database using the schema from the SalesForce database

20   but added what needed to be added for the connection to the --

21   to the Bates numbers for the documents so that we could

22   display those Bates numbers as well.

23   Q   All right. And you said "we." Who is "we" when you're

24   talking about SalesForce analysis?

25   A   My colleague, Wilford Thompson, and myself.

1   Q   Would you characterize you as being in charge, though?

2   A   Yes, I directed his work in that respect.

3   Q   Did you check his work?

4   A   Yes.

5   Q   You did quality assurance checks of his work?

6   A   As best we were able, given the format of the data that

7   we received, yes.

8   Q   And those exported spreadsheets, they had lots of rows

9   and columns?

10   A   Lots of rows and columns, yes.

11   Q   All right. And in the files that you discussed

12   yesterday, those were attachments that clients had attached to

13   the tickets, right, that when they were communicating with

14   Rimini through the SalesForce portal?

15   A   Some that I discussed came via e-mail, but many came via

16   SalesForce, yes, as attachments to the SalesForce portal.

17   Q   And just so I understand, SalesForce is a client-facing

18   portal that Rimini clients can go to to interact with Rimini

19   engineers?

20   A   It's both client-facing and Rimini-facing, just to be

21   clear. I mean, it's a vehicle of communication between the

22   two.

23   Q   Got it.

24   And one of the functions that is made available to

25   the client-facing portion of that is the client's ability to

1   send a message to Rimini?

2   A   That is correct, yes.

3   Q   And also to attach files that then, when the message is

4   sent, that file is put in the ticket in the SalesForce system,

5   correct?

6   A   Right. If you're viewing it through a normal SalesForce

7   interface, you would see a hypertext link that would allow you

8   to pull the file up and review it.

9   Q   Got it.

10   And the summaries that you prepared, those supported

11   your opinions, correct?

12   A   That is correct, yes.

13   Q   And you want the judge to rely on your opinions, correct?

14   A   I would like him to take onboard my opinions. You know,

15   it's the judge's discretion what he chooses to rely on and not

16   rely on.

17   MR. VANDEVELDE: All right. If I could have --

18   John, if you could bring up OREX_13, please, just briefly.

19   Just the first page is fine, the first substantive page and

20   the next page.

21   BY MR. VANDEVELDE:

22   Q   So this was the summary you prepared relating to RR

23   Donnelley and Sons company, correct?

24   A   That is correct, for case number 161623.

25   Q   Got it.

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1   In that case you provided testimony regarding a file

2   psptax.dms, correct?

3   A   That's correct, yes.

4   Q   And the client had uploaded that file to SalesForce,

5   correct?

6   A   That is correct, yes.

7   MR. VANDEVELDE: And, John, if you could pull up

8   OREX-103, please.

9   BY MR. VANDEVELDE:

10   Q   And this is another one of your summaries?

11   A   Yes, this was for Guest Services, case number 158235.

12   Q   And with respect to this SalesForce record, you testified

13   about a file gettaxdata.sqc.txt?

14   A   Yeah. I don't remember that the A in data -- the second

15   A in data was in the name. I think the name was shortened a

16   little bit. But I know the file you're talking about.

17   Q   Sure, and I said it in more English, full English even

18   though the file may be truncated slightly.

19   And you testified that that file, too, was uploaded

20   by the client, Guest Services, to Rimini, correct?

21   A   That is correct, yes.

22   Q   And these summaries, you wanted them to be accurate,

23   correct?

24   A   Again, as accurate as we were able to create based on the

25   underlying data that we were provided.

1   Q   And you wanted to paint a fulsome picture to the judge in

2   terms of what information you were summarizing?

3   A   Yes.

4   MR. VANDEVELDE: If you could pull up 104,

5   please, OREX.

6   BY MR. VANDEVELDE:

7   Q   And this is another one of the summaries you prepared?

8   A   Yes, the Guest Services, 162214 summary.

9   Q   And this one relates to a series of files in the form of

10   tax920us, tax922us, tax920, tax921us, and tax923us, correct?

11   A   Correct.

12   Q   And you testified that these files were uploaded by the

13   client to Rimini, correct?

14   A   Again, that is correct, yes.

15   MR. VANDEVELDE: And if you could pull up

16   OREX-105, please.

17   BY MR. VANDEVELDE:

18   Q   And this is another one of your summaries?

19   A   Yes, this is the University of Oklahoma Health Sciences

20   Center, case number 1642037.

21   Q   And you provided testimony about a file called

22   gettstdta.sqc.txt?

23   A   That's, to the best of my recollection, the proper

24   spelling of that file, yes.

25   Q   And you testified that that file, too, was uploaded by

1   the client to Rimini SalesForce system, correct?

2   A   Correct.

3   Q   And these are all of the SalesForce cases you've

4   discussed yesterday?

5   A   I think that is all of them, yes.

6   Q   So it covers all the files that you discussed yesterday

7   as well relating to SalesForce?

8   A   I think yesterday, and a couple were this morning, I

9   believe, yes.

10   MR. VANDEVELDE: Okay. Correct.

11   And, John, if you could bring up tab 9, please.

12   BY MR. VANDEVELDE:

13   Q   Ms. Frederiksen-Cross, you prepared a declaration in

14   support of Oracle's response to Rimini's response to an order

15   to show cause, correct?

16   A   That is correct.

17   Q   And it was supporting Oracle's position with respect to

18   the order to show cause, correct?

19   A   That is correct, yes.

20   Q   And you knew it would be filed?

21   A   I did know it would be filed, yes.

22   Q   And if you turn to the next page, paragraph 1 --

23   A   Well, let me correct, I believed that it would be filed.

24   Obviously I didn't know that until it was filed.

25   Q   Okay. You knew it was a declaration, correct?

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1   A   Yes.

2   Q   You know what a -- you have submitted many declarations

3   over your career?

4   A   That is correct, yes.

5   Q   In paragraph 1 you say in the second sentence,

6   "I submit this declaration in support of

7   Oracle's response to Rimini's response to the order

8   to show cause. I have personal knowledge of the

9   facts set forth in this declaration and can testify

10   competently to them if asked to do so."

11   Correct.

12   A   Correct.

13   Q   And in paragraph 2, in the first sentence it says,

14   "With support from my colleagues at

15   JurisLogic, I have reviewed computer-based evidence

16   produced by Rimini in this matter, including .csv

17   files."

18   And then you list several of them, correct?

19   A   That is correct, yes.

20   Q   In one of them, the second from the last, is

21   rsi007954583, correct?

22   A   I see that, yes.

23   Q   And in the next sentence you state that,

24   "Oracle's counsel informed me they were part

25   of SalesForce productions produced by Rimini in

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 1        October and January" -- "October 2019 and January

 2        2020."

 3                 Correct?

 4    A    That is correct.

 5    Q    And then you reviewed these documents?

 6    A    I did, yes.

 7    Q    And the corresponding metadata?

 8    A    Yes, I did.

 9    Q    And then you offer an opinion that these .csv files are

10  exports from the following SalesForce tables, and then you

11  list several, and one of them is Cases.  It's the third from

12  the last.

13    A    I see that, yes.

14    Q    Okay.  Did you review the Cases table?

15    A    I recall that I reviewed all of these when we initially

16  received them, yes.

17    Q    And then you say,

18                "At my direction my colleagues at JurisLogic

19        created a database to store the data extracted from

20        Rimini SalesForce" -- apologies, that's in paragraph

21        3, that first sentence, "extracted from Rimini

22        SalesForce .csv files for greater ease of review."

23                Do you see that?

24    A    That is correct, yes.

25    Q    Okay.  Is that accurate?
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1   A   It is, yes.

2   Q   And then skipping a sentence or, actually, the next

3   sentence you say, "My colleagues created a new database,"

4   correct?

5   A   That is correct, yes.

6   Q   And then in the next sentence,

7   "They imported the relevant columns from

8   Rimini's .csv file into each table."

9   Do you see that?

10   A   Yes.

11   Q   Okay. How did you determine what was a relevant column?

12   A   The columns that contained information related to cases,

13   clients, dates, and status communications with the client, as

14   well as columns that included attachments and information

15   about when those attachments were uploaded.

16   So the information was relative to my investigation

17   of how these files came to be on or attached to the SalesForce

18   system and what the surrounding issues with respect to the

19   communications relating to these files was.

20   Q   Did you review the columns?

21   A   I'm sure that I did, yes.

22   Q   Including for the Cases table?

23   A   That is my recollection, counsel.

24   Q   How did you determine between what's relevant and not

25   relevant?

1   A   Well, some -- again, we obtained some information about

2   the scheme of the SalesForce table through counsel.

3   And we made our distinction of what was relevant

4   about what we needed to include to extract the specific

5   information that we were trying to get out of these SalesForce

6   records.

7   Q   You selected only some of the columns, didn't you?

8   A   That's correct, yes.

9   Q   Not all of them.

10   A   Yes.   We didn't need to rewrite the entire SalesForce

11   software, we just needed to be able to review the data here.

12   Q   You could have selected any of them, though, right, in

13   preparing your summaries?

14   A   We could have.   It would have made the summaries much

15   more longer and much more voluminous.

16   Q   Is that the only reason that you didn't select other

17   columns?

18   A   That's correct, yes.

19   Q   All right.   In paragraph 5 of your declaration you state

20   in the first sentence,

21   "I directed my colleague to run sequel

22   queries against the database to obtain information

23   about each case identified in the Cases table."

24   Do you see that?

25   A   I see that, yes.

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1   Q   Is that accurate?

2   A   Yes.

3   Q   And then you state,

4   "I directed my colleagues to join the results

5   from the Cases table with records in the other

6   tables, account attachments, et cetera, which contain

7   additional information."

8   Do you see that?

9   A   I see that.

10   Q   And from those, that's how you generated your summaries

11   that you presented to the Court, correct?

12   A   That's correct, yes.

13   Q   And it says that, "The results include information such

14   as every comment posted to each case." Do you see that?

15   A   Yes.

16   Q   Is that accurate?

17   A   I believe it to be.

18   Q   Even right now you believe that to be accurate?

19   A   Yes.

20   Q   And in paragraph 6 you say you directed your colleagues

21   to populate an individual HTML file for each case with the

22   aforementioned information, correct?

23   A   That is correct, yes.

24   Q   And that's what became the summaries you presented to the

25   Court yesterday and this morning, correct?

1   A   That is correct, yes.

2   Q   And, again, did you double-check any of the work that you

3 had your colleague at JurisLogic perform?

4   A   I did go back in and examine some of the underlying

5 portions of those table extracts that we received to confirm

6 that it was consistent with what our HTML showed, yes.

7   Q   And then on the last page of the declaration you state

8 that you made this declaration under penalty of perjury,

9 correct?

10   A   That is correct.

11   Q   Okay. Now, you used those summaries in court yesterday,

12 correct?

13   A   That is correct, yes.

14   Q   And this morning?

15   A   That is correct.

16   Q   And you wanted those to be accurate?

17   A   Yes.

18   Q   You testified yesterday that for each of them you didn't

19 see any evidence of Rimini telling a client not to upload or

20 attach Oracle or other third-party IP via SalesForce, correct?

21   A   With the exception of that one comment that I mentioned

22 in passing, I think it was late in the afternoon yesterday,

23 where there was a comment that said, you know, "I can't open

24 these sqrs." But with that exception, yes.

25   Q   And in fact yesterday you testified -- and this from a

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 1   transcript yesterday.  You were asked, "And did you find any

 2   message from" --

 3                   MR. VANDEVELDE:  I'm sorry, John, if you could

 4   bring up her testimony from yesterday, page 195, lines 18 to

 5   21, please.  If you could highlight or blow up 18 to 21,

 6   please.

 7   BY MR. VANDEVELDE:

 8    Q   And you were asked,

 9           "And did you find any message from Rimini to

10        the University of Oklahoma Health Sciences Center

11        advising them not to upload files?"

12           And your answer was, "No, I did not,"

13        correct?

14    A   That's correct.

15    Q   And that was under penalty of perjury, too, correct?

16    A   That is correct, sir.

17                   MR. VANDEVELDE:  Okay.  If you could bring up

18   her testimony from yesterday, page 172, lines 21 to 23,

19   please.

20   BY MR. VANDEVELDE:

21    Q   And you were asked,

22           "Did you ever come across any evidence of

23        anyone at Rimini Street advising anyone at Guest

24        Services not to upload files?"

25           And you answered, "I have not seen such
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1   evidence, no."

2   That's what you said, right?

3   A   That is correct, yes.

4   Q   And that was under penalty of perjury, correct?

5   A   That is correct, yes.

6   Q   Were you here in the courtroom for openings yesterday?

7   A   I was.

8   Q   And for Oracle's counsel's as well?

9   A   For both parties' openings, yes.

10   Q   Did you see Oracle's counsel's slides?

11   A   I could sort of barely see them. I was sitting in the

12   gallery so I was trying to view them on a screen that was

13   visible to me, but I couldn't really make out too much.

14   Q   Did you review them before they were presented?

15   A   No, I did not have that opportunity.

16   Q   Do you remember the big slide he had where half the page

17   was with a huge zero on it?

18   A   If you can put it up and refresh my recollection. I kind

19   of vaguely remember a slide with a zero on it, but I don't

20   remember what it was about specifically.

21   Q   Well, do you remember the title of that slide? It was,

22   "Rimini claims it has reminded clients not to

23   send copyrighted files but has not identified a

24   single reminder that was sent to any client involved

25   in the conduct found to violate the injunction."

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 1              Do you remember the title of that slide?

 2    A    I don't, sir.

 3    Q    And there was a huge zero, took up half the page of the

 4   slide.

 5    A    I remember there was a slide that had a zero on one half,

 6   I just -- I didn't memorize the slides.

 7    Q    Did you agree with the content of that slide?

 8    A    Repeat for me what the statement was?

 9    Q    The statement was,

10              "Rimini claims it has not [sic] reminded

11         clients not to send copyrighted files but has not

12         identified a single reminder that was sent to any

13         client involved in the conduct found to violate the

14         injunction."

15    A    And you're asking me do I agree with that?

16    Q    Do you agree with Oracle's counsel's slide presented to

17   the Court in opening yesterday.

18              MR. SMITH:  I would object, your Honor, that

19   that actually misstates what the slide says.

20              MR. VANDEVELDE:  I can read it again.  Maybe I

21   misread it.  I'll read it into the record again.

22              "Rimini claims it has reminded clients not to

23         send copyrighted files but has not identified a

24         single reminder that was sent to any client involved

25         in the conduct found to violate the injunction."
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1   Did I read that correctly, counsel?

2   MR. SMITH: You did.

3   MR. VANDEVELDE: Thank you.

4   BY MR. VANDEVELDE:

5   Q   Do you agree with that statement?

6   A   As I sit here, I have some concern about that.

7   Q   Okay. What's your concern?

8   A   I am thinking about that one piece that I read from

9   the -- from the SalesForce record yesterday where at least --

10 at the very least Rimini said to a client, "I won't be able to

11 open those on my machine."

12   I don't think they specifically said don't send

13 them, but they certainly at least provided some information

14 that there was a question about whether they could use them.

15   Q   But other than that, you have no other concerns?

16   A   Of sending a reminder to a client not to send -- none

17 that I think of as I sit here now, counsel.

18   MR. VANDEVELDE: I'm going to move to admit DTX

19 41 which is the underlying spreadsheet for her summaries. It

20 is Bates number rsi007954583, which is the same Bates number I

21 read from Ms. Frederiksen-Cross's declaration as the one that

22 she relied on in preparing her 1006 summaries, your Honor, so

23 I would move to admit DTX 41 at this time.

24   MR. SMITH: I have no objection, your Honor.

25   THE COURT: It's admitted.

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1   (Defendant's Document Exhibit 41 received
                  in evidence.)
2   MR. VANDEVELDE: And, John, I know it's an

3   unwieldy document, but, yeah, if you could just bring up just

4   it first screenful of data.

5   BY MR. VANDEVELDE:

6   Q   So, Ms. Frederiksen-Cross, you'd agree that there's a lot

7   of data in this spreadsheet?

8   A   Yes. This is the case .csv spreadsheet, for the record.

9   Q   And that's what we were talking about earlier, right?

10 The case is .csv. Now it's being presented in an Excel

11 spreadsheet format, but it was an export of the SalesForce

12 data from which you prepared your summaries, correct?

13   A   That is correct, yes.

14   Q   Okay. And there are quite a few columns, and your

15 summaries did not include all those columns, correct? You

16 chose certain ones?

17   A   That's correct.

18   Q   In row 1, did you review all those column names before

19 preparing your summaries?

20   A   My recollection is that I worked with my colleague to

21 review which ones would be important to extract because they

22 had comments or subjects or dates or other information like

23 references to attachments that we wanted.

24   I don't recall -- I mean, in doing so, we must have

25 looked at all of those column names. I don't recall

1   specifically as I sit here what all the ones are, but we would

2   have gone through this as we looked at this and tried to

3   determine what information would be important to extract for

4   our summaries.

5   Q   Did you -- you wanted to extract important information,

6   correct?

7   A   That was my intent, yes.

8   MR. VANDEVELDE: Okay. And if you could go to

9   column GB, John, just to show header of that one, right?

10   BY MR. VANDEVELDE:

11   Q   This is a column called Important, correct?

12   A   I see that, yes.

13   Q   And you didn't select this column, did you?

14   A   I did not select that column.

15   MR. VANDEVELDE: Okay. And if you could show

16   column K briefly, John.

17   BY MR. VANDEVELDE:

18   Q   This is the case number, correct?

19   A   That is correct.

20   Q   This is the data that you based your summaries on,

21   correct?

22   A   We started with the case file and then selected from the

23   other tables, that's correct.

24   Q   And you could have chosen any of these columns to include

25   in your summaries, correct?

1   A   That is correct.

2   Q   And you could have chosen that column GB labeled

3   Important, correct?

4   A   Yes. I am not concern how I missed that column, counsel,

5   because had I -- in looking at this now, I would have wanted

6   to include that.

7   MR. VANDEVELDE: Okay. And, John, can you pull

8   up DTX 41A, it's just an excerpt of DTX 41. I assume there's

9   no objection, but --

10   MR. SMITH: No objection.

11 BY MR. VANDEVELDE:

12 Q   And this is an excerpt of DTX 41, it's identified and

13 marked as DTX 41A, it has two columns. You see row numbers on

14 the left-hand side. Do you see those, Ms. Frederiksen-Cross?

15 A   I see the row numbers, yes.

16 Q   And you also see column headers K and GB, those are the

17 ones we saw earlier, correct?

18 A   I see that, yes.

19 Q   Okay. And there are cases there. Do you see those in

20 column K?

21 A   I see that, yes.

22 Q   And those correspond to the cases that you testified

23 about yesterday, correct?

24 A   I have to confess, counsel, that I didn't memorize the

25 full list of case numbers because I have them in my exhibits,

1   but if that's your representation, I'm willing take it as a

2   fact.

3   Q   Okay. And column GB, which is labeled Important, it

4   contains the statement --

5   MR. VANDEVELDE: John, if you could blow up one

6   of those, please.

7   "Please do not upload any third-party

8   software, for example, code, contained in either

9   documentation, trace files, or screenshots, or any

10   other third-party intellectual property, or

11   confidential data to this client portal, or send such

12   information to Rimini Street via e-mail."

13   BY MR. VANDEVELDE:

14   Q   Do you see that?

15   A   I see that, yes.

16   Q   You didn't include that in your summary, did you?

17   A   That is correct, counsel.

18   Q   And you testified that you didn't see any evidence of

19   warnings to clients of not uploading files, correct?

20   A   I did give that testimony, counsel, yes.

21   Q   And this is one of those warnings, isn't it?

22   A   Yes. And I have no -- I somehow missed this column,

23   counsel. I --

24   Q   And every single client in here, all four of them have

25   the same warning, "Please do not upload any third-party

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1 software." Correct?

2   A   I see that warning here, counsel, yes.

3   MR. VANDEVELDE: And if we could go back to DTX

4 41, please, and I apologize, John, but if you could go back

5 over to column GB.

6 BY MR. VANDEVELDE:

7   Q   Do you see column GB?

8   A   Yes, I see it, counsel.

9   Q   And it's labeled Important again?

10   In every single row in this screen full of data

11 contains the same warning, "Please do not upload third-party

12 IP." Do you see that?

13   A   I see that, counsel.

14   Q   How many rows are in this spreadsheet?

15   MR. VANDEVELDE: John, can you scroll down to

16 the bottom where the data is.

17 BY MR. VANDEVELDE:

18   Q   How many rows are there?

19   A   Appear to be 571 rows including the header, counsel.

20   Q   So that's 571 warnings to clients to not upload Oracle or

21 other third-party IP to Rimini, correct?

22   A   I see that here, counsel, yes.

23   Q   And none of that was presented to the Court.

24   A   I did not present that to the Court, yes, counsel, that's

25 correct.

1   Q   And you could have chosen to include that in your

2   summaries but you didn't.

3   A   As I said, counsel, it was not a deliberate omission. I

4   do not know how I missed this column. But I will agree that

5   it was not present in my summaries that I provided to the

6   Court.

7   Q   And if the clients would have heeded that warning, then

8   they wouldn't have uploaded the PeopleSoft files to Rimini,

9   correct?

10   A   In theory, though, as we saw in some of these records,

11   Rimini specifically requested information from the counsel --

12   from the clients, and so I don't know how the clients would

13   have resolved that apparent contradiction.

14   MR. VANDEVELDE: Well, let's go into that.

15   John, if you could show me the full contents of

16   any one of those GB cells, please. Is there a way you can

17   blow that up, that one cell, or not?

18   Can you go back then to DTX 41A and blow up any

19   one of those columns that's labeled Important.

20   BY MR. VANDEVELDE:

21   Q   Can you read the last sentence of that warning?

22   A   "All access to your supported products will be

23   via the remote access established during your

24   onboarding process."

25   Q   So isn't that how clients are supposed to communicate

1   with Rimini when they want to send a file?

2   A   That appears to be what this statement is saying,

3   counsel.

4   Q   So Rimini does tell clients what to do and to place the

5   files in their system so that Rimini can access them remotely,

6   correct?

7   A   I have certainly seen some of evidence of that.

8   Q   But yesterday you testified that you did not see evidence

9   of that, correct?

10   A   No, I did not testify that Rimini doesn't ask its clients

11   to put data in the remote sites. I specifically mentioned

12   several instances of that in my testimony yesterday as we went

13   through these records.

14   Q   In every single instance we've seen, though, in column

15   GB, Rimini has a message to its clients saying do not upload

16   third-party IP to our systems, and all access to your

17   supported products will be via remote access, correct?

18   A   I see that that is in this column of the extract from the

19   database.

20   Q   So that big zero that Oracle's counsel presented to the

21   Court yesterday, that was false, correct?

22   A   Assuming that this column is displayed to the user in the

23   fashion that they can see it in SalesForce, that would be

24   correct.

25   MR. VANDEVELDE: John, if you could take that

1   down for a second.

2   BY MR. VANDEVELDE:

3   Q   Yesterday you talked about quarantining, correct?

4   A   Yes.

5   Q   And you said you checked the metadata with respect to

6   certain files and whether it indicated the file had been

7   quarantined or not?

8   A   That is correct, yes.

9   Q   What metadata are you talking about?

10   A   The metadata that was produced by the e-discovery vendor

11   in association with these attachments that identifies, for

12   instance, the location of the attachment on the Rimini system

13   when it was recovered by the e-discovery vendor.

14   Q   So are you talking about the metadata of just the file

15   itself, the attached file itself?

16   A   That was what was made available for my review, yes.

17   Q   No other metadata.

18   A   I dealt with the metadata that was made available for my

19   review. I reviewed what available to me.

20   MR. VANDEVELDE: John, if you could bring up her

21   testimony from yesterday, page 140, line 20, to the beginning

22   of the next page a little bit, and if you could blow up 22,

23   line number 1, on the next page, please.

24   BY MR. VANDEVELDE:

25   Q   So you were asked the question, "Did you check the

1   metadata, the psptaxdt.dms file," correct?

2   A   Yes.

3   Q   You were asked that, and then you answered,

4   "Yes, that's how I know this file came the

5   normal attachments folders, the same one we see being

6   used for other attachments."

7   And then you were asked, "Had the file been

8   locked down or isolated in some way, would you expect

9   the metadata to show something different?"

10   Do you see that?

11   A   Yes.

12   Q   And what was your answer?

13   A   That I would expect that most likely it would, yes.

14   Q   Is that the only way to detect whether a file had been

15   quarantined?

16   A   From the information that was made available to me, that

17   was the method I have.

18   I know that one of the Rimini's witnesses has made

19   the assertion that these files were quarantined, but he did so

20   without providing the underlying basis for that so I didn't

21   have anything other than his representation that he had had a

22   conversation and was told that.

23   Q   So you don't know whether they're quarantined, correct?

24   A   As I testified yesterday, counsel, all indications that I

25   have seen are that they are not quarantined.

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1   If there is some other evidence of quarantining, I

2   would be happy to review that, but the evidence that has been

3   made available to me suggests that they are not.

4   Q   But the only thing you checked was the metadata of the

5   file itself, correct?

6   A   That was what was made available to me, yes, that and the

7   messages to the security team who presumably would have been

8   the ones to implement such a quarantine.

9   Q   Do you know whether those were part of discovery in the

10   proceeding?

11   A   They were provided to me by counsel. I assume they must

12   have been if counsel had them, but I don't know where they got

13   them or when.

14   Q   So you reviewed e-mails to that e-mail address,

15   security@riministreet.com?

16   A   No, it was a log of e-mails that went to that address was

17   what was made available to me.

18   Q   Do you know the methods by which you can quarantine a

19   file in SalesForce?

20   A   I know some of the methods whereby one can quarantine a

21   file in SalesForce. I don't know all of the methods, or I

22   don't know if I know all of the methods I guess I should say.

23   Q   Have you ever quarantined a file in SalesForce?

24   A   Personally I have not, no.

25   Q   Do you know what e-mail system Rimini uses?

1   A   Only insofar as it's discernible from the e-mails that

2   have been produced to me.

3   Q   And so were you able to discern anything?

4   A   It appears that they use Exchange, and I think I've seen

5   evidence of some other e-mails. In the context of the Rimini

6   II case there's reference to people using their personal

7   e-mails for things.

8   Q   The SalesForce productions you relied on for your

9   testimony regarding the files found on Rimini's systems, are

10   you aware that those were produced in October 2019 and

11   January 2020?

12   A   Those are the dates I was given for those productions,

13   yes, counsel.

14   Q   And, in fact, those were actually in your declaration,

15   weren't they? We saw those?

16   A   That's correct.

17   Q   So you're not offering any opinion on whether any of the

18   files you discussed yesterday were quarantined after those

19   dates of production, correct?

20   A   I would have no basis to do so other than just the

21   communications I've seen where -- I can say that I haven't

22   seen any evidence, but if there was something that occurred

23   after the evidence that was produced to me, I wouldn't be able

24   to opine upon it without looking at it, counsel.

25   Q   All right. I'm going to switch topics a little bit,

1   still staying with the issue of files found on Rimini's

2   systems sent by clients.

3   You spent a number of hours yesterday going through

4   code comparisons regarding certain client-sent files, correct?

5   A   That is correct, counsel.

6   Q   Files sent by the clients from the client's remote

7   systems to Rimini, correct?

8   A   Right, and located in Rimini's production when they

9   produced those files to us.

10 Q   Correct. Either they were sent via e-mail or they were

11 uploaded to SalesForce, correct?

12 A   That's correct, yes.

13 Q   And but those are from the client's Oracle environment,

14 right?

15 A   I can't opine with certainty where the clients got them.

16 I presume they were -- from the communications that they were

17 from the clients' Oracle environment.

18 Q   Well, Rimini is providing PeopleSoft support, right?

19 A   To clients, yes.

20 Q   And its clients have PeopleSoft environments, correct?

21 A   That's correct.

22 Q   On those client systems, correct?

23 A   Correct, or on the systems -- I know there's some dispute

24 about whether the Windstream systems are client systems or

25 not, so I want to leave a clear record here they're on the

1   systems that Rimini accesses for those clients or which -- to

2   which the clients have access.

3   Q   Okay. But if the client sent a PeopleSoft file from its

4   environment to Rimini, it stands to reason that it was the

5   PeopleSoft file from -- one of the PeopleSoft files from the

6   client's environment, the client's system, correct?

7   A   From some -- some one of the client's environments

8   because mostly these clients have multiple environments, but I

9   think that is a reasonable supposition.

10   Q   You're aware that Rimini is not disputing that those

11   client-sent files are PeopleSoft files, correct?

12   A   I am -- I -- to the best of my knowledge, Rimini is not

13   disputing that they are PeopleSoft files.

14   Q   Where they came from its clients' PeopleSoft

15   environments, correct?

16   A   That also is correct.

17   Q   So you would expect that if a client, from its own client

18   environment, sends a PeopleSoft from its own client

19   environment to Rimini, that it would match a PeopleSoft file,

20   correct?

21   A   More likely than not, I would expect that, yes, unless

22   there was some big problem.

23   Q   I mean, you would expect very high levels of matching,

24   right? Because if Rimini had never touched that file in the

25   client's systems, it would be a hundred percent match,

—400—

1   correct?

2   A   Yes, we saw some examples of that yesterday.

3   Q   Okay. And if we modified a few lines, it would be a

4   very, very high percentage match, 99 point something, correct?

5   A   That's correct.

6   MR. VANDEVELDE: If we could put up

7   Ms. Frederiksen-Cross's slide number 18 from yesterday,

8   please.

9   BY MR. VANDEVELDE:

10   Q   This was one of your demonstratives, right?

11   A   Correct.

12   Q   So you are indicating that you compared -- let's just

13   take the box on the left, the file that the client sent to

14   Rimini found on Rimini's systems tax920.txt, you compared it

15   to the Oracle file, tax920.sqr, do you see that?

16   A   Correct. You've highlighted the wrong box but that's

17   okay.

18   Q   The tax920.sqr below it.

19   A   And the specific version of that file that was OREX-233.

20   Q   Correct. And it was a hundred percent match, correct?

21   A   Yes.

22   Q   That's not surprising, again, right? Because the file

23   was sent by the client from its PeopleSoft environment to

24   Rimini so you would expect, if Rimini had never modified it,

25   it would have to be a hundred percent, right?

-401-

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 1    A    Yes, it would be an unmodified Oracle file unless either

 2   the client or Rimini had modified that file.

 3    Q    You displayed this to show a very high percentage of

 4   matching even though Rimini wasn't disputing that that was a

 5   PeopleSoft file found on Rimini's systems, correct?

 6    A    Yeah, I was just recording what I found when I did the

 7   comparison.

 8    Q    Even though it wasn't disputed.

 9    A    Again, I was reporting what I found when I compared the

10   files that would we found on Rimini's system to basic Oracle

11   files.

12    Q    And then the middle box, the Oracle file sent by a Rimini

13   client and found on Rimini's systems was tax921us.txt in the

14   middle in the top blue box?

15    A    Correct.

16    Q    And it was compared to another Oracle file, tax921us.sqr,

17   do you see that?

18    A    Yes.

19    Q    And you had a matching line percentage of 99.77, correct?

20    A    Yes.

21    Q    And, in fact, it wasn't just this demonstrative, you had

22   a comparison of the files for each, and as you walked through

23   them saying how much of the two files matched, correct?

24    A    Well, I pointed out the colors that represented the

25   matching, and where there were few matches or more matches I
```

1   noted that, yes, that's correct.

2   Q   Even though it's not surprising there would be a very

3   high degree of matching if a client sends one of its

4   PeopleSoft files to Rimini.

5   A   Again, I was reporting on my findings, counsel. That

6   is -- you know, I didn't consider whether Rimini disputed or

7   didn't dispute it, I was reporting what I found on Rimini's

8   systems.

9   Q   And the 99.77, it's not a hundred, right, because there

10   was a few lines in that file, correct, that Rimini had

11   modified?

12   A   Right. My recollection is that -- that this file

13   probably had maybe eight or ten lines that were different, a

14   small number of lines that were different.

15   Q   And that shows that Rimini did those modifications in

16   that client's system, right, because the client sent that file

17   back to Rimini, correct?

18   A   It showed that that modified file was on the client's

19   system for the client to be able to send it back. It wouldn't

20   show where that change was made. So if it had been made on

21   some other system and provided to the client, you couldn't

22   tell that from the comparison. All you could tell is what the

23   client had that they sent Rimini was very similar to what the

24   original Oracle file was.

25   Q   But that file was sent from the client to Rimini,

-403-

1   correct?

2   A   Correct.

3   Q   Just to round it out on the last box, that was a

4   comparison between the file sent by a client, found on

5   Rimini's systems, tax923us.txt, correct?

6   A   Correct.

7   Q   And the Oracle file used for comparison was tax923us.sqr,

8   correct?

9   A   Yes, the specific version that's in OREX-224.

10   Q   And, again, there's a matching percentage of a hundred

11   percent, correct?

12   A   Right.

13   Q   Even though it wasn't disputed, correct?

14   A   Again, I reported what I found with respect to the

15   correspondence of that file that was on Rimini's system and

16   the corresponding file that I received from Oracle for the

17   comparison, or received from the Oracle production I should

18   say.

19   Q   You opined -- I'm going to switch gears a teeny bit, same

20   topic regarding files allegedly found on Rimini's systems, or

21   at least some of which were allegedly found on Rimini's

22   systems.

23   In paragraph 198 of your opening report you testify

24   about some searches ran across Rimini's production, do you

25   remember that?

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1   A   I don't remember the specific paragraph number, but I

2 know that I addressed the searches that we had found in

3 several places in that report, yes.

4   Q   Well, it was the searches where you were running -- you

5 were looking for Oracle within, I think you said, 15 terms of

6 copyright, do you remember that?

7   A   That's my recollection, is that it was within 15 of

8 copyright, and PeopleTools within 15 of copyright, and I just

9 don't -- didn't recall the specific paragraph number.

10   Q   And there were a number of hits you state?

11   A   Correct, yes.

12   Q   You didn't offer any opinions on the contents of those

13 hits other than running the search term I should say, correct?

14   A   That's correct. We filtered them down to a more

15 manageable number to review specific files.

16   Q   And even amongst the filtered -- well, how many files

17 were there after you filtered?

18   A   Which filter operation?

19   Q   On file types and on file name, I believe.

20   A   It probably would be easiest if we just pulled that

21 paragraph --

22   Q   Yeah, why don't we --

23   A   -- because I know we put them in there.

24   My recollection is it's something like 1100, and

25 then when we filtered further for the specific program file

405

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 1   types it was -- I want to say 984, but I don't remember the

 2   exact number.

 3    Q   Sure.  Why don't we pull up -- this is tab 5, it's your

 4   opening report, paragraph 198.

 5           So you ran the search.  The unfiltered results was

 6   4,481, and then you filtered them by text files and files

 7   starting 00P, and you identified 1,139, then you further

 8   filtered by file type, dot sqr, dot sqc, dot dms, dot cbl,

 9   dot --

10               THE COURT REPORTER:  Mr. Vandevelde --

11               MR. VANDEVELDE:  Oh, sorry, I apologize.  I know

12   that was fast.  I'm actually used to these file extensions by

13   now.

14               THE COURT REPORTER:  Uh-huh, but I'm not.

15               MR. VANDEVELDE:  I'll start that over.

16               Dot sqr, dot sqc, dot dms, dot cbl, dot sql, dot

17   pls, dot pkb, and dot h.

18   BY MR. VANDEVELDE:

19    Q   You filtered by those, correct?

20    A   Right, the various program language types.

21    Q   And I think you said yesterday 984, but in your report

22   you say 934.  I assume that's the right number?

23    A   934 would be the correct number, I believe, yes.

24    Q   And of those 934 documents, you didn't offer any opinions

25   on the contents of those files, correct?
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1   A   Only with respect to the ones I presented yesterday in

2   testimony.

3   Q   And you didn't offer any opinions on whether any of those

4   files were used, correct?

5   A   I did not during this hearing, that is correct, with

6   exception of the ones we specifically discussed again.

7   Q   And you didn't conduct any analytic dissection of any of

8   those files, correct?

9   A   I would not agree with that characterization, counsel.

10   I did not use the specific steps that Dr. Astrachan

11   feels are necessarily analytic dissection, but, particularly

12   for those files that I discussed here court, I compared the

13   content, I looked at the content, I attempted to filter out

14   anything that was a constraint in the language, or some other

15   constraint, before arriving at my conclusions about whether or

16   not the contents that were identical between the files were

17   probative of any copying or likely to be materials that I

18   believed to be copyrightable expression.

19   Q   You said particularly regarding those files, but that was

20   only regarding the files you did yesterday, correct?

21   A   I tried to recall as I sit here, and I just don't recall

22   as I sit here if there was some we looked at that we

23   discounted entirely.

24   You know, all of these have Oracle copyright by the

25   time we get down to this number, and we verified -- I verified

1   that they all contained Oracle copyright.

2   I don't recall that I did analytic dissection on all

3   934 of them.

4   Q   You don't recall whether you did analytic dissection on

5   all 934?

6   A   No, I did the analytic dissection on the ones that I

7   presented here in court.

8   Q   And did you open each one of those 934 documents?

9   A   I personally did not open every one. I think between my

10   colleague and I, we would have opened them all.

11   Q   There are no opinions, though -- putting aside the ones

12   you talked about yesterday and this morning, you don't offer

13   any opinions about the contents of any of those other -- the

14   balance of those 934 documents, correct?

15   A   Beyond as stated here that they contained Oracle

16   copyright statements.

17   Q   In paragraph 69 of your report --

18   MR. VANDEVELDE: And, actually, John, if you can

19   just bring that up. I'm sorry, your surrebuttal report which

20   is tab 30, if you could please blow up 69.

21   BY MR. VANDEVELDE:

22   Q   In the last sentence you say,

23   "Of the 934 files" which is referenced in the

24   previous sentence "roughly 98 percent have extensions

25   .sql, .pkb, or .pls of file types intended to be used

—408—

1   with instances of Oracle database."

2   Correct?

3   A   That's correct.

4   Q   Did you confirm they were going to be used -- that they

5   were used with Oracle database?

6   A   These are files that contain Oracle copyright, and these

7   are file types that are used with Oracle database operations

8   either with respect to the Oracle plsql which would be the pkb

9   and pls extensions, or the native .sql, but all of these

10   contained Oracle copyright.

11   Q   PL sequel is a procedural language extension to structure

12   query language or sql sequel, correct?

13   A   That is correct, yes.

14   Q   So pl sequel is a language.

15   A   That is correct, yes.

16   Q   Are you aware that it can be used with other databases?

17   A   It is my recollection that there are some other databases

18   that have adopted the convention and support of plsql.

19   Q   Is it your contention that every pl sequel file is an

20   Oracle file?

21   A   The ones with Oracle copyrights are.

22   Q   Did you confirm -- well, let me strike that.

23   You opine in footnote 125, which is on page 30 --

24   MR. VANDEVELDE: John, if you could bring that

25   up and blow up footnote 125 --

409

1   BY MR. VANDEVELDE:

2   Q   -- that the files are -- let me find it on here.

3   The last two lines,

4   "It is my opinion that these files are likely

5   associated with Oracle database instances that are

6   part of Oracle EBS," correct?

7   A   Yes.

8   Q   EBS is not a part of this proceeding, correct?

9   A   I'm not aware that it is.

10 Q   Okay. But, in any event, you concluded that they were

11 likely Oracle database files, correct?

12 A   Yes.

13 Q   Based on the extensions?

14 A   The extensions and the presence of the Oracle copyright.

15 Q   You're aware, correct, that the Oracle license and

16 service agreement, the OLSA, which is the license that covers

17 Oracle database, does not contain a facilities restriction,

18 correct?

19 A   My understanding is that to be true, but I have not

20 independently sampled all of the licenses at issue to

21 understand with certainty that that is true.

22 Q   Have you reviewed an OLSA before?

23 A   I have seen OLSAs before, yes.

24 Q   And did any of them have a facilities restriction?

25 A   Not specifically that I recall, counsel.

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 1                    MR. VANDEVELDE:  I'm going to turn to a

 2   different topic now.  We need to hand out another binder, too,

 3   so hold on one second.

 4                    THE WITNESS:  Can I set this one aside for the

 5   moment?

 6                    MR. VANDEVELDE:  Yes, you may.  Thank you.

 7                    THE WITNESS:  It gets a little crowded up here.

 8                    MR. VANDEVELDE:  I know the feeling.

 9   BY MR. VANDEVELDE:

10    Q   All right.  I'm going to turn to Issue 3.  I'm referring

11   to the issue numbers by the issues on the big board we put up

12   at the beginning of the proceeding.

13          Issue 3 concerns the testing of a W2 update that

14   Rimini delivered to Johnson Controls.  Do you remember that

15   one?

16    A   Yes.

17                    MR. VANDEVELDE:  And, yeah, let's bring up tab

18   16, please, at page 4, which is the prehearing order, and it's

19   number -- there it is.

20                    So it's the highlighted one in paragraph 3 which

21   states,

22                    "Whether Rimini violated paragraphs 4 and 6

23      of the injunction with respect to its testing of a W2

24      update that Rimini delivered to customer Johnson

25      Controls, and, if so, whether Rimini should be held
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1   in contempt."

2   BY MR. VANDEVELDE:

3   Q   So that's your understanding of the issue at play with

4   respect to Johnson Controls?

5   A   It is, yes.

6   Q   And the Court said that it, quote,

7   "...must hear from both parties' competing

8   experts to determine if Rimini's testing in this

9   context constitutes unlawful cross-use in violation

10   of the injunction."

11   MR. VANDEVELDE: Can you briefly pull up tab 17

12   which is DTX 306 which is a form W2, and I'm just going use

13   this as a demonstrative, it's just a sample W2 form.

14   BY MR. VANDEVELDE:

15   Q   You know what a W2 form is, correct?

16   A   Oh, yeah, I've seen a few.

17   Q   Maybe not recently, but have you received any before?

18   A   Yes.

19   Q   Okay. Before you worked on your own?

20   A   No, I'm a salaried employee of JurisLogic, I get one

21   every year.

22   Q   Okay. And it's a federal form, right?

23   A   That is correct, yes. Well, both federal and state, it

24   also reports the state W2 withholdings.

25   Q   Okay. It's -- yeah, but it's a federal form in the sense

1   that the IRS puts it out, correct?

2   A   Absolutely.

3   Q   So businesses that have employees in the United States

4   will have to issue W2s, correct?

5   A   Yes.

6   Q   And the employer reports wage information and they're

7   typically sent out at the beginning of each year, right?

8   A   Yeah, usually by January 31st.

9   Q   And then the employees use them to report income to the

10   IRS?

11   A   Correct.

12   Q   Now, the problem at issue --

13   MR. VANDEVELDE: And, John, if you could blow up

14   one of these. This is several of the forms.

15   BY MR. VANDEVELDE:

16   Q   The problem at issue, and I'm going to call it Issue 3,

17   is that there were alignment issues in certain boxes when

18   information was printed in them, correct?

19   A   Correct.

20   Q   Do you remember what boxes it was?

21   A   I don't specifically. I want to say 17, but I'm not

22   certain that that's correct, I would want to double-check.

23   Q   Okay. I think you're right, I think it was 17 and 14.

24   Does that sound right?

25   A   I think 14 was one of the boxes, and I think it was this

1   same tax year so --

2   MR. VANDEVELDE: All right. Now, John, if you

3   could bring up tab 5, which is your opening report, paragraph

4   272.

5   BY MR. VANDEVELDE:

6   Q   This is one of the paragraphs in your report, correct?

7   A   Yes.

8   Q   And starting on the second line it says,

9   "I noted several additional instances of

10   Rimini leveraging its work for prototype customers to

11   reduce the labor and shorten the time for testing

12   updates for other customers."

13   I'll pause there.

14   Is it unlawful cross-use for Rimini to get

15   better and faster at its job?

16   A   It's my understanding that the Court has said that that

17   would not be an unlawful cross-use.

18   Q   So it's irrelevant to your analysis now that Rimini may

19   get faster at its job.

20   A   I would not answer that as a blanket question without a

21   specific instance, counsel, because there may be instances

22   where I would still consider the timing to be relevant.

23   But as a general principle with respect to

24   leveraging its work for prototype customers, the Court's found

25   that that's fair game, and so I would not dispute that.

-414-

1   Q   Previously did you opine that Rimini engineers couldn't

2   get better and faster at their job?

3   A   I don't think that I offered that specific opinion,

4   counsel.

5   Q   And then you say -- at the end of this paragraph, you

6   say, "Such leveraging of work to reduce testing is a form of

7   cross-use," correct?

8   A   I see that, yes.

9   Q   Reducing testing is saving time, right?

10   A   It can be; not necessarily. I mean, obviously, if you

11   reduce testing and as you miss something, you're not going to

12   save time because you're going to have to go back and find it

13   and fix it.

14   So I wouldn't say that that is necessarily a way of

15   blanket reducing time. In some instances reducing testing may

16   reduce time.

17   Q   But wouldn't you generally say that if you're reducing

18   testing, you're reducing the amount of time it takes?

19   A   In a particular instance, you would be reducing the

20   amount of time it takes.

21   My experience of software programming is that that

22   is a fraught trade-off to make, and so, as a general

23   principle, I tend to favor on the side very thorough testing

24   for everything because of my experience that it sometimes

25   bites you in some very unexpected ways.

1   And if a problem goes undetected for a period of

2   time and results in any corruption of the database, or any

3   corruption of some downstream process, it becomes more

4   expensive and more difficult to find and fix because now you

5   have, if you will, water under bridge from whatever the defect

6   was, bad data in your database, bad will from your customers

7   you've recorded something wrong to.

8   So, again, I'm cautious on saying that it's a

9   reduction of time.

10   Q   But leveraging your prior work, you would agree, can

11   reduce testing, right? It's possible.

12   A   In some instances, I can think of that it would probably

13   be possible, yeah.

14   Q   So you say such leveraging of work to reduce testing is a

15   form of cross-use, correct?

16   A   Correct.

17   MR. VANDEVELDE: And if you could show the next

18   paragraph, John, please.

19   BY MR. VANDEVELDE:

20   Q   And you opine in paragraph 273, you say, "I found several

21   examples of Rimini using COE" -- that's City of Eugene, right?

22   A   Correct, yes.

23   Q   "...for the testing of updates destined for other

24   customers often along with reusing updates previously

25   provided to other customers."

—416—

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 1                  Do you see that?

 2    A    That is correct, yes.

 3                  MR. VANDEVELDE:  And if you could blow up the

 4    next paragraph, 274, please.

 5    BY MR. VANDEVELDE:

 6    Q    And paragraph 274 of your report -- this is the paragraph

 7    about the issue relating to the W2 update for Johnson

 8    Controls, correct?

 9    A    That is correct, yes.

10    Q    All right.  And in support of your -- this is your

11    opinion about the provision of that W2 update to fix the

12    alignment issue to Johnson Controls, correct?

13    A    Well, just to be clear, this is in the context of

14    troubleshooting a problem from Johnson Controls as opposed to

15    some prior testing of something that was rolled out to Johnson

16    Controls.

17            They obviously hadn't had this fix yet or they

18    wouldn't have had the problem.  But setting aside that, it is

19    in the context of that troubleshooting for Johnson Controls.

20    Q    And in this paragraph you cite an e-mail, correct, from

21    Don Sheffield?

22    A    Yes.

23    Q    And you cite an instant message on the fourth line from

24    the bottom, right, between Judy Bush and Don Sheffield,

25    correct?
```

-417-

1   A   Yes.

2   Q   And in support of this paragraph you didn't cite anything

3   else, correct?

4   MR. VANDEVELDE: And I ask, John, maybe you can

5   help her --

6   THE WITNESS: Yes, the e-mail and the instant

7   messaging is what I'm citing here, that is correct.

8   MR. VANDEVELDE: Okay.

9   THE WITNESS: I would want to look at the

10   footnotes to see if I added anything in the footnotes.

11   MR. VANDEVELDE: I was going to suggest that.

12   John, can you show her her footnotes, too, and

13   can you bring up the paragraph so we can see --

14   THE WITNESS: Thank you, counsel.

15   BY MR. VANDEVELDE:

16   Q   So I see footnote 279, 280, 281, and 282, and so those

17   are the first four footnotes at the bottom, and those just

18   cite to two documents, one is rsi007421994, and one is

19   rsi007329024, right?

20   A   Yes.   Thank you, counsel.

21   Q   And as to the e-mail, you note in your paragraph 274

22   starting at the fourth line towards the right,

23   "Rimini employee Don Sheffield notes that

24   Rimini has created a workable version to a similar

25   problem for customer HCR which he suggests they can

—418—

1   just give to JHN," correct?

2   A   Correct.

3   Q   And JHN is Johnson Controls?

4   A   Yes.

5   Q   You took that to mean that testing was not performed in

6   Johnson Controls, correct?

7   A   Well, at that time they could not have tested the fix

8   because they didn't have the fix yet.

9   Q   Okay. Maybe I misunderstood.

10   A   Okay.

11   Q   I'm asking, you took that e-mail from Don Sheffield that

12   you summarize here to mean that testing was never performed of

13   this update for the W2 alignment issue for Johnson Controls,

14   correct?

15   A   Of this fix for Johnson Controls, yes.

16   Q   That e-mail, that's what you relied on.

17   A   Yes.

18   Q   Just because someone in an e-mail doesn't describe an

19   event, does that mean that event didn't happen?

20   A   I found no evidence that it had happened prior to the

21   provision of this test -- or of this fix to Johnson Controls

22   with respect to this specific fix.

23   Q   Let me ask that again. Just because an event isn't

24   described in an e-mail, does that mean that event didn't

25   happen?

-419-

1   A   It's not dispositive, but given the entire context of the

2   e-mails and this textural exchange, and what I could divine

3   from the other records available to me, it appears that no

4   testing had happened here prior to this fix. That is to say,

5   no testing for this fix had happened in that environment.

6   Q   I know this is a really silly example, but if I send you

7   an e-mail that says hello, and I don't say that I had lunch

8   today, that doesn't mean I didn't eat lunch today, correct?

9   A   I hope you had lunch today, counsel.

10   Q   I did actually. Thank you very much for asking.

11   But I'm just saying just because it's not in the

12   e-mail doesn't mean it didn't happen, correct?

13   A   That's a fair supposition, I suppose.

14   Q   Do you know whether this update for Johnson Controls was

15   tested?

16   A   Again, I did not see evidence that this update was tested

17   before the fix was provided or in the context of developing

18   this fix for Johnson Controls.

19   The evidence I see shows that this fix was tested in

20   City of Eugene, and that the information was then provided to

21   Johnson Controls so that they could attempt to apply this fix

22   and see if it resolved their problem.

23   Q   So you don't know whether it was tested in Johnson

24   Controls for sure. I understand that you -- and the e-mail

25   doesn't say it, but you don't know it for certain, correct?

—420—

1   A   I see nothing to indicate that it was, counsel.

2   Q   Okay.

3   A   I mean, if you have evidence that it was, I would be more

4   than happy to look at it and consider that evidence.

5   Q   And as you also -- going back to your paragraph 274, you

6   also comment on an instant message, it's the fifth line from

7   the bottom.

8   "In a related instant message conversation on

9   the same day, Rimini QA employee Judy Bush and

10   Sheffield thinks they need to test the correction

11   files noting that there is already a solid test in

12   COE," that's City of Eugene.

13   Do you know what the correction files are?

14   A   I am assuming here that they are referring to the image

15   files that were being sent back for the W2 correction, W2-c

16   forms.

17   Q   Could it be correction files as in corrected W2s?

18   A   Well, recall that this fix involved both the image files

19   for the W2s that caused the alignment problems, and then the

20   specific file to fix those problems, the specific coding

21   change.

22   Q   You understood that instant message, like the e-mail from

23   Don Sheffield, to mean that testing of the correction files

24   hadn't occurred, correct?

25   A   Well, Bush suggests doing another extensive test in the

-421-

1   MAS environment, so presumably testing had occurred in MAS

2   because he refers to doing another test in MAS.

3   But if you're asking did I assume that they had not

4   occurred on JHN, I think from Johnson, yes, that's correct.

5   Q   At the very end of that paragraph, I think you just

6   alluded to it, Bush -- you say Bush -- Judy Bush, in the IM --

7   instant message, right?

8   A   Correct.

9   Q   Suggests doing another extensive test in MASO. Do you

10 know who that -- which client that pertains to?

11 A   My recollection is it's Massy, M-a-s-s-y, which I think

12 was a tooling company, but I would want to double-check that.

13   As I sit here, I don't recall specifically which

14 environment that was. I know it was a different environment

15 for a different customer, but that's my best recollection as I

16 sit here.

17 Q   So in that instant message you relate that,

18   "Bush suggests doing another extensive test

19   in MASO, then run to success on the rest as they are

20   all getting the same code."

21   Do you see that?

22 A   Uh-huh.

23 Q   Now, you're aware that the update --

24   MR. VANDEVELDE: And, John, you can bring this

25 down now for a second.

1 BY MR. VANDEVELDE:

2 Q   You're aware that the update for Johnson Controls to fix

3 the W2 misalignment issue involved an Adobe .pdf file,

4 correct?

5 A   Well, the actual change that appears to have ultimately

6 fixed it was the change to the program that populates the

7 Adobe .pdf, or the form file with the data, so it was actually

8 changed to a program that fixed where the printing in the .pdf

9 would occur when the two were merged.

10 Q   Okay. But there was an Adobe .pdf template involved in

11 the update, correct?

12 A   That is my recollection.

13 Q   And it represented the IRS tax form, the W2 form,

14 correct?

15 A   Correct, the empty form that would be filled in by the

16 program.

17 Q   And I believe you testified, but I don't want to speak

18 for you, that you're not contending that Rimini's use of the

19 Adobe .pdf form is a violation of the injunction in any way;

20 is that right?

21 A   That's correct. It's my understanding that that was a

22 standard IRS derived form.

23 Q   Okay. So if Rimini went to City of Eugene because City

24 of Eugene was affected by the W2 issue, and determined what to

25 the change in the Adobe .pdf file, and made changes to the

1   Adobe .pdf file, the IRS form, is it your contention then that

2   Rimini can then send that Adobe .pdf file to other clients?

3   A   I hadn't thought about that specific example. I would

4   have to think about that a little bit, counsel.

5   Q   That's what I'm asking.

6   A   I think it depends on what the origin of the Adobe file

7   was.

8   My understanding has been that it was -- that the

9   position of the parties has been -- or the understanding of

10   the parties has been that that was an Adobe file that was from

11   the federal government.

12   So I don't think that there is necessarily -- since

13   changing an Adobe file would involve the Adobe software, not

14   the PeopleSoft software or JDE software, so, again, I'd want a

15   few more details to fill in that hypothetical.

16   But assuming that it was an IRS file, and assuming

17   that it was changed using Adobe software as opposed to

18   something in the PeopleSoft environment, I don't think that

19   the injunction applies because the injunction is directed to

20   using Oracle software for one licensee on behalf of another.

21   Q   And that actually wasn't my question.

22   City of Eugene, assume they're affected by the

23   environment and Rimini figures out what to do to the Adobe

24   .pdf file by looking at the problem in City of Eugene's

25   environment, and then Rimini takes that public IRS Adobe .pdf

-424-

1   and makes some changes to it, doesn't involve any Oracle code

2   or any Oracle software, are you now withdrawing your previous

3   opinion, I think, that Rimini could never send that .pdf file

4   to any other client?

5   A   I don't think I've ever offered the opinion that Rimini

6   never send a .pdf file they created or modified to a client so

7   long as it was done divorced from the use of the PeopleSoft

8   software or PeopleSoft environment and Oracle-supplied

9   content.

10 Q   And I'm asking you to assume that Rimini did use -- they

11 logged into the City of Eugene, they were running the

12 environment, they diagnosed the issue, and they figure out

13 that, hey, the solution to this is to take that Adobe .pdf

14 file and make some tweaks, and it will solve the problem for

15 City of Eugene.

16   So they did use City of Eugene software to come up

17 with that solution. What is your opinion on whether Rimini

18 can ever send that Adobe .pdf file to any other client?

19 A   It's a bit of a corner case, and I would probably want to

20 think it through very carefully because I just know what

21 you're saying now.

22   You're not saying that they used Adobe on City of

23 Eugene's environment to understand what the problem with the

24 Adobe function was, but, rather, that somehow they were using

25 PeopleSoft to diagnose an Adobe problem.

425

1   Q   Correct.

2   A   Is that your hypothetical?

3   Q   Correct.

4   A   Then it's a little bit more dicey proposition because, if

5   they're using the PeopleSoft environment to troubleshoot

6   problems on behalf of other clients, I think that obviously

7   that would ultimately be up to the Court.

8   But that would be a type of cross-use that, unless

9   the Court approved as an exception to its prohibitions here,

10   may well be prohibited.

11   Q   So you don't know.

12   A   Well, I would know that it is a form of cross-use that I

13   would understand to fall within the Court's injunction.

14   But whether the Court would view modifying and Adobe

15   file and sending it to other customers in the very narrow

16   hypothetical you've provided, you know, I think that that's

17   ultimately a matter for the Court to decide.

18   I mean, it's not what happened here because they

19   changed the program ultimately also to fix the problem and

20   then sent the PeopleSoft program out to other PeopleSoft

21   clients. So I hadn't really considered this hypothetical or

22   tried to evaluate all the ins and outs of it.

23   Q   But you said something, you said they sent the PeopleSoft

24   program out to other clients. What are referring to?

25   A   They sent the PeopleSoft solution to another client what

1   they needed to do.

2   Q   Yeah, there was no PeopleSoft software sent to any other

3   client, correct?

4   A   No, there was the -- let's see. If I recall correctly,

5   this is the 9999 one, right?

6   Q   No, it's not, it's the W2 form one.

7   A   In the W2 form they did ultimately, I believe, update

8   that tax960 -- I want to look at the name of it, and sent that

9   file out.

10   It's my recollection is that they sent an Oracle

11   file. That's my recollection as I sit here. I'd like to look

12   at the evidence again if we could bring up the SalesForce

13   record on that or the e-mails to see exactly what they

14   provided.

15   Q   Rsi940A, just to refresh your recollection, relates to

16   Matheson Trucking, which is Issue 2, and Smead and Spherion,

17   position four, so I think you're mistaken.

18   A   Yeah, I'm mixing these up in my head then. I would like

19   to see the evidence with respect to what this specific fix was

20   before I answered your question.

21   Q   Well, I'm asking, do you recall -- you said that on Issue

22   3, relating to the W2, that Rimini sent PeopleSoft software to

23   clients, and that caught my ear because --

24   A   No, I think I misspoke there.

25   I think that they sent a fix or communicated a fix

427

1   that was related to the settings that had to be made using the

2   PeopleSoft tools and the PeopleSoft environment to adjust the

3   PeopleSoft printing parameters relative to that form.

4   I do not recall that the fix was -- they tried to

5   modify the form, and they first modified one box, and then

6   there was a problem with another box, and then they finally

7   said "we need to make this other change" is my recollection of

8   the facts.

9   But, like I said, I'd just like to look at the

10   underlying evidence because it's late in the day and I'm

11   getting a little confused I think.

12   MR. VANDEVELDE: Your Honor, do you want to take

13   a break now? I know we've still got a half hour, I could keep

14   going, but it's up to you.

15   THE COURT: Well, I am sympathetic to

16   Ms. Frederiksen-Cross having been on the stand for -- straight

17   through for a day and a half or really two days.

18   I think under the circumstances and in fairness

19   to her it's a good idea to take a recess at this time.

20   MR. VANDEVELDE: That's fine with me, your

21   Honor.

22   THE COURT: Is there any objection to that by

23   anyone?

24   MR. SMITH: There's no objection. Is this a

25   recess or an adjournment for the day?

1   THE COURT: Adjournment for the day, and

2   obviously I wouldn't count this against anyone's time one way

3   or the other.

4   MR. VANDEVELDE: Thank you, your Honor.

5   MR. SMITH: Can we ask for one clarification,

6   your Honor, on expert demonstratives? Because we know that

7   Rimini's experts are coming up.

8   We provided Ms. Frederiksen-Cross's

9   demonstratives the day before her testimony, but I understand

10   that Rimini is not willing to provide demonstratives for their

11   experts ahead of their testimony.

12   We would appreciate receiving the demonstratives

13   at least one day ahead of time so we can make sure there's no

14   problems or raise any objections outside the context of the

15   hearing just to be efficient.

16   THE COURT: I would expect Rimini to do that.

17   MR. VANDEVELDE: Just to actually set the

18   record, we did provide them before Ms. Frederiksen-Cross took

19   the stand. That is not accurate.

20   At 9:00 p.m. on the night before the hearing

21   Oracle's counsel sent me and my team an e-mail saying will you

22   agree to exchange, and we said certainly before but not the

23   night before, and we were very clear, and then they

24   unilaterally sent them to us because we have five witnesses

25   and they have one witness, and so they obviously want to see

1   ours further in advance, and so we declined.

2   It's my understanding that local practice is you

3   hand them up before a person you're about to cross-examine is

4   going to be cross-examined.

5   THE COURT: No, it's the day before.

6   MR. VANDEVELDE: Okay. Then for the

7   demonstratives we will give them the day before.

8   THE COURT: That is the practice before this

9   court, I can tell you that, in every case.

10   MR. VANDEVELDE: That's fine with me. I just

11   wanted to conform.

12   THE COURT: Okay.

13   MR. SMITH: Thank you, your Honor.

14   THE COURT: All right. With that, we'll go

15   ahead and take our adjournment at this time. It's 4:40 on

16   Tuesday afternoon, and we'll start again in the morning

17   promptly at 9:00 a.m.

18   I want to thank everyone for being here, being

19   available, and keeping the show going.

20   (The evening recess was taken.)

21   -o0o-

22   I certify that the foregoing is a correct
          transcript from the record of proceedings
23   in the above-entitled matter.

24   /s/Margaret E. Griener   9/22/2021
           Margaret E. Griener, CCR #3, FCRR
25   Official Reporter

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1   **I N D E X**

2

3   **PLAINTIFF'S WITNESSES:**   **PAGE:**

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8   **PLAINTIFFS' EXHIBIT:**   **MARKED**   **RECEIVED**

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      Exhibit 100 --   363

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      Exhibit 174 --   357

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      Exhibit 212 --   336

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      Exhibit 1341 --   273

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14   **DEFENDANTS' EXHIBITS:**

15   **Exhibit 41 --**   387

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